

Current Legislative Issues

Overview of Federal Health Care Reform
Proposals

Keep this in mind!

“ The government solution to a problem is usually as bad as the problem.”

Milton Friedman

Federal Health Reform

The Major Proposals:

1. H.R. 3200 “America’s Affordable Health Choices Act (S1679): Tri-Committee health reform bill
2. Affordable Health Choices Act (S1679): Senate HELP Committee (no bill # assigned)
3. Sen. Baucus : Framework For Comprehensive Health Reform: America's Healthy Future Act of 2009

Keep this in mind, too!

“If you put the federal government in charge of the Sahara Desert, in 5 years there’d be a shortage of sand.”

Milton Friedman

H.R. 3200

- Passed by 3 separate House Committees;
 - Education and Labor
 - Ways and Means
 - Energy and Commerce
- Mostly along party lines
- Republicans objected to high cost

H.R. 3200

ERISA impact

- This bill would:
 - a) End the ERISA pre-emption for self funded groups and expose them to potential state criminal and civil penalties
 - b) Permit states to adopt single payer models that would preempt ERISA and mandate participation by self funded groups
 - c) Create a new tax on self funded groups to fund comparative effective research
 - d) Require federal approval of ERISA health plans similar to the requirements imposed on pension plans today

H.R. 3200

Employer requirements

- All employers must offer coverage through QHBP's or grandfathered plans
- Employers required to pay 72.5% of cost for individuals and 65% of cost for families
- Employers must cover part-timers on a pro rata basis
- In lieu of paying for coverage, employers would pay 8% of wages

H.R. 3200

Employer requirements

- Payroll up to \$500,000; **exempted from 8% penalty**
- Payroll of \$500,001 to \$585,000; **pay 2%**
- Payroll of \$585,001 to \$676,000; **pay 4%**
- Payroll of \$670,001 to \$750,000; **pay 6%**

H.R. 3200

Individual mandate

- Individuals must maintain acceptable coverage or pay a tax penalty of 2.5% of the AGI over “threshold” amount
- Threshold not yet determined. Probably will be determined by revenue needs
- Tax won't exceed a national average premium for individuals or families
- Acceptable coverages include a qualified employer plan, Medicare, Medicaid, TRICARE, VA coverage
- Entities providing acceptable coverage must provide annual documentation, probably similar to the part D creditable coverage notices sent to Medicare beneficiaries on group plans
- Hardship waivers will be permitted

H.R. 3200

Current coverage

- Existing individual policies could be retained if the only change required is to add or delete a dependent
- Group plans would be allowed to phase in reform over 5 years if they don't meet the QHBP requirements

H.R. 3200

Market reforms

- All health plans, insured and self funded, required to issue coverage, regardless of health status
- Eliminates use of pre-existing condition exclusions
- Eliminates annual or lifetime limits on benefits
- Dependents to be covered to 26
- HIPAA guaranteed issue and guaranteed renewability apply to all plans, not just small group plans

H.R. 3200

Market reforms

- All QHBP's required to use modified community rating with variances allowed for enrollment class, geographic, and age bands.
- Maximum rate variation = 2:1
- No rate variation allowed for health status, gender, SIC, claims experience, etc

H.R. 3200

Plan benefits

- No cost sharing for preventive services and well child care
- Three levels of coverage
 1. Base package: maximum 30% cost sharing
 2. Enhanced package: maximum 15% cost sharing
 3. Premium plan: benefits have to be 95% of the value of the recommended benefit plan

H.R. 3200

Plan benefits

- Out of pocket maximum will be \$5000 for individuals, \$10,000 for families, indexed to CPI
- Co-payments will be preferred over coinsurance
- HSA's, FSA's and HRA's can continue but HSA plans may not meet the health plan actuarial equivalents. May introduce a bill to exempt HSA plans
- OTC items no longer an allowed expense in these plans
- All plans must meet a maximum 85% loss ratio

H.R. 3200

National Health Insurance Exchange

- Creates a new health insurance exchange administered by a new federal agency, “Health Choices Administration” governed by an appointed commissioner
- In year one, individuals and groups up to 10 would be allowed to purchase through the exchange, groups up to 20 in year two and any size group in year three, if allowed by the commissioner
- States are allowed to establish their own exchanges provided that only one exchange per state is allowed

H.R. 3200

National Health Insurance Exchange

- Creates a Health Insurance Ombudsman appointed by the commissioner
- Role is to receive and provide assistance with complaints, grievances, requests for information, enrollment issues, etc
- Establishes a “Health Benefits Advisory Committee” chaired by the surgeon general to make recommendations on minimum benefit standards and cost sharing levels

H.R. 3200

Government-Run Public Option

- Creates a public plan available through the national health insurance exchange
- The exchange will initially be financed by an **unlimited** start up fund through HHS but eventually by self sustaining including establishment of reserves
- Secretary of HHS will negotiate rates for providers that are not lower than Medicare or higher than the average rates paid by private plans offered through the exchange
- A risk adjustment will be determined by the commissioner to prevent adverse selection

H.R. 3200

Agents and Brokers

- Health Choices Commissioner to develop uniform marketing standards for all entities offering QHBP's
- Specifically states that the role of agents and brokers will be unchanged and that all QHBP's must use agents including the public plan

H.R. 3200

Various issues

- Expands Medicaid to individuals up to 133% of FPL. Cost to be shared by states and federal government
- Sliding scale tax subsidies for those between 100% and 400% of FPL. Subsidy only available if coverage purchased through the Exchange
- Doesn't cover illegal immigrants
- Provides various tax credits for small businesses
- Reimbursement for Medicare Advantage plans reduced to traditional FFS Medicare

H.R. 3200

Various issues

- MA plans prohibited from offering cost sharing greater than Medicare
- Imposes price controls on MA plans
- Long Term Care amendment proposed

H.R. 3200

Revenue Sources

1. Surtax on AGI of upper income Americans (\$544 billion)
 - a) 1% on \$350K to \$500K increasing to 2% in 2013
 - b) 1.5% on \$500k to \$1 m increasing to 3% in 2013
 - c) 5.4% on \$1m or more beginning in 2011
 - d) 5.4% is maximum rate (for now)
2. Prohibition of OTC items in HRA, HSA, FSA (\$8 billion)
3. Pay or play payments from employers (\$163 billion)
4. Tax on employer plans (\$2 billion)
5. Payments by employers to the exchange (\$45 billion)
6. Payments from uninsured individuals (\$29 billion)

H.R. 3200

Revenue Sources

7. Permanent reductions in annual updates to Medicare payment rates for most services other than physician services (\$196 Billion over 10 years)
8. Setting MA rates on per capita Medicare spending (\$156 billion)
9. Changes to Part D with a new rebate program and coverage in the gap (\$30 billion)
10. Other (\$37.1 Billion)

Affordable Health Choices Act (S1679)

- Health, Education, Labor and Pensions Committee approved the draft in July
- Still in markup and hasn't received a bill number yet
- Claims to be bi-partisan but passed the committee on a 13-10 party line vote
- Expected to be merged with whatever comes from America's Healthy Future Act of 2009

Affordable Health Choices Act (S1679)

ERISA impact

- Creates a minimum standard for all benefit plans regardless of insured or self funded
- Using claims experience for insured groups would be prohibited

Affordable Health Choices Act (S1679)

Employer Requirements

- Employer must pay 60% of premiums for individual or pay \$750 per year for each full time employee not covered, \$375 for part timers
- Coverage must meet standards established
- Exempts employers of 25 or less

Affordable Health Choices Act (S1679)

Individual mandate

- All individuals must have insurance or pay an income tax penalty of up to 50% of premium cost (max of \$750)
- Health plans must provide documentation to individuals to prove coverage
- Hardship exemptions provided

Affordable Health Choices Act (S1679)

Current Coverage

- Existing individual coverage OK if only change is to add or delete an individual

Affordable Health Choices Act (S1679)

Market Reforms

- All health plans including self funded plans required to guarantee issue
- Eliminates pre-x and lifetime or annual limits
- All insured plans required to use modified community rating varying by geography, enrollment status, age bands.
- Maximum ratio 2:1

Affordable Health Choices Act (S1679)

Plan Benefits

- Secretary of HHS to determine benefits and OOP limits
- If plan premium is greater than 12.5% of AGI, individual is eligible for subsidy credits only if they are enrolled through the exchange
- Benefit plans can have tiers not to exceed 76% of total cost for lowest tier, 84% for middle tier, 94% for highest tier
- No change to HSA's FSA's HRA's

Affordable Health Choices Act (S1679)

GATEWAY

- Each state required to establish a Gateway mechanism within 4 years
- Similar functions to the Nat'l Health Insurance Exchange
- Gateway will risk adjust premiums to prevent adverse selection and remove incentives for plans to avoid offering to sickest members
- Creates an Ombudsman to provide assistance

Affordable Health Choices Act (S1679)

Government-Run Public Option

- Creates a new community health insurance option offered through the gateway
- Providers not required to participate
- Secretary of HHS to negotiate rates not more than the average reimbursement rates paid by private plans offered through the gateway
- Risk adjustment will base payments or credits to each plan on whether they have a higher or lower risk profile

Affordable Health Choices Act (S1679)

Navigator

- Bill allows states to set up “**Navigators**” as facilitators for those looking for coverage
- Navigator can be either a public or private entities
- Could include trade organizations, chambers of commerce, professional and industry organizations, unions, licensed agents or brokers



Affordable Health Choices Act (S1679)

Navigator

- Role is to conduct public education, distribute information about enrollment, availability of subsidies, etc
- Federal support available
- Standards to be set by secretary of HHS
- No specific language on Agents or Brokers

Affordable Health Choices Act (S1679)

Various issues

- No other federal entities established under this bill
- Requires states to set up advisory councils to monitor the community health insurance options
- Medicaid expansion deferred to finance committee
- Subsidies available for those between 100% and 400% of FPL
- Tax credit available for small businesses
- No reference to MA plans

Affordable Health Choices Act (S1679)

Revenue Sources

- Not entirely outlined in the proposed bill. See America's Healthy Future Act of 2009 draft
- Creates new tax penalties for those not complying with individual mandate
- Penalties for employers who do not provide approved coverage

America's Healthy Future Act of 2009

- Draft released by Chairman Max Baucus (D-MT) on September 8th
- Represents agreement with the “Gang of Six” also referred to as the “Bipartisan Six”
- Sen Ben Nelson (D-Neb), Sen Mary Landrieu (D-La), Sen Ron Wyden (D-Ore), Sen Joe Lieberman (I-Ct), Sen Olympia Snowe (R- Me), Sen Susan Collins (R-Me)

America's Healthy Future Act of 2009

■ ERISA impact

- Expands much of ERISA to allow oversight and control of the insurance aspect of benefit plans
- Sets Basic benefit levels in small group and Individual markets

America's Healthy Future Act of 2009

Employer Requirements

- Employers (>50 only) not required to offer health insurance but fee assessed for each employee who receives a tax credit for purchasing coverage through an exchange
- Fee is capped at \$400 per employee times number of employees (even those not receiving tax credits)
- Medicaid eligibles can leave the Employer's plan and enroll in Medicare with no penalty

America's Healthy Future Act of 2009

Individual Mandate

- Effective 1/1/2013, all individuals required to have health coverage or pay a fine of up to \$750 to \$950 per year.
- Families would pay up to \$1,500 to \$3,800

America's Healthy Future Act of 2009

Market Reforms: Individual Market

- Non Group market: No Pre X, GI,
- No lifetime limits
- No limited benefit plans
- Premiums allowed to vary based on geography, age, family composition and Tobacco Use
- Maximum variance from all factors is 7.5:1

America's Healthy Future Act of 2009

Market Reforms: Individual Market

- Allowed variances:
 - Tobacco 1.5:1
 - Age 5:1
 - Adult + 1 child 1.8:1
 - Two adults 2:1
 - Family 3:1

America's Healthy Future Act of 2009

Market Reforms: Individual Market

- States allowed to form Health Care Choice Compacts to allow sale of insurance across state lines
- Policies subject to the laws and regulations of the state where the policy is written
- Tax credits and cost sharing assistance to be provided

America's Healthy Future Act of 2009

Market Reforms: Small Group Market

- Small group is 1 to 50 unless State reg is different
- Definition goes to 1 to 100 by 2017
- Reforms are same as Individual Market plus:
- Non conforming plans given 5 years (beginning 1/1/2013) to comply with minimum standards
- A set of basic services to be covered by all plans is defined

America's Healthy Future Act of 2009

Market Reforms: Small Group Market

- Risk sharing mechanisms to be incorporated
 - Reinsurance
 - Risk Adjustment
 - Risk Corridors
- Objective is to protect the re-formed markets from adverse selection

America's Healthy Future Act of 2009

Market Reforms: Small Group Market

- State High Risk Pool funding increased in 2010
- Provides tax credits for 2011 and 2012 for small businesses with <25 employees and average wages below \$40,000
- Permanent tax credits (<25 only) available after small group reforms have been implemented

America's Healthy Future Act of 2009

Plan Benefits

- 4 Levels
 1. Bronze = 65% of plan value
 2. Silver = 73% of plan value
 3. Gold = 81% of plan value
 4. Platinum = 90% of plan value
- Basic services defined for all individual and small group benefit plans

America's Healthy Future Act of 2009

Plan Benefits

- 20% penalty for non-medical withdrawals from HSA
- \$3000 limit on Individual HSA contributions, \$5950 for families
- \$2000 cap on contributions to FSA's
- OTC items excluded from coverage

America's Healthy Future Act of 2009

Health Insurance Exchange

- State based entity to facilitate enrollments for individuals and small groups
- Exchange to provide call center, standardized enrollment form, standard format of benefit descriptions
- Federal support in first year but must be self sustaining after first year
- Requires states to establish an ombudsman office by 2011

America's Healthy Future Act of 2009

Public Option: CO-OP

- No public option included in this draft
- Authorizes funding for CO-OP (Consumer Operated and Oriented Plan) program
- Intent is to eventually have non-profit member-run health insurance companies

America's Healthy Future Act of 2009

Public Option: CO-OP

- Available for individuals or employees of firms not providing health insurance
- Federal loans available to fund start up costs
- Federal grants available to meet state solvency requirements

America's Healthy Future Act of 2009

- A CO-OP must
 - Not be an existing organization
 - Not be affiliated with any insurance company or its subsidiaries
 - Not be sponsored by a state or local government
 - Use profits to lower premiums, improve benefits or improve quality of health care to its members
 - Incorporate ethics in its by laws

America's Healthy Future Act of 2009

Revenue Sources

- 35% excise tax on health insurance plans above \$8,000 per individual and \$21,000 per family
- Limits medical FSA's to \$2,000 per year
- Eliminates exclusion for Part D subsidy
- Limits definition of Qualified Medical Expenses to those used for itemized deduction (essentially eliminates OTC items except for prescribed OTC drugs)

America's Healthy Future Act of 2009

Revenue Sources

- Increases to 20% the penalty for non-medical withdrawals from Health Savings Accounts (HSA)
- Annual fee of \$2.3 billion imposed on Pharmaceutical Companies by market share
- Annual fee of \$4 billion imposed on Medical Device manufacturers by market share
- Annual fee of \$6 billion imposed on Health Insurance providers by market share
- Annual fee of \$750 million imposed on clinical laboratories by market share (except for small businesses)

America's Healthy Future Act of 2009

Various issues

- Expands Medicaid eligibility
- Reduces a state's Disproportionate Share Hospital (DSH) allotment as number of uninsured declines
- Adds incentives for healthy lifestyles to Medicare and Medicaid
- Links payment to quality for Hospitals, Physicians, SNF's and HHC agencies
- Replaces 21% reduction in Medicare physician fees in 2010 with a 0.5% increase

America's Healthy Future Act of 2009

Various issues

- Medicare Advantage benchmarks based on weighted average of plan bids beginning in 2014.
- Phase in plan for 2011 to 2014
- Extra benefits offered by MA plans subject to new conditions
- Establishes a new Medicare Commission to investigate solvency of Medicare program