

Battles to Come: Health Care Reform in its Final Stage?

David Coates, Rebecca Matteo and Michael S. Lawlorⁱ

For those already tired of the months of political bickering over the detail of health care reform, the early months of 2010 will not be an easy time. For them, a personally-adopted complete news blackout may well be the only sensible route to survival; for the final fight over the details of the one common bill that the president will be asked to sign seems set to make the earlier fights over health care reform in the House and the Senate feel like a walk in the park. Commentary will invariably focus on the big ticket items in dispute within and between the two main political parties, but there will be devilment in the details too – so those with the stamina for yet another round might do well to keep both the big and the small in their sights when politics resumes as normal after the Christmas break.

Here, for your guidance, are some of the significant issues that are still in dispute, and those that apparently are not.

(A much fuller listing can be found at <http://www.kff.org/healthreform/sidebyside.cfm>)

Areas of Agreement between the House and Senate bills

- ***Mandates that most Americans must carry health insurance or pay a fine.***
- ***The creation of health insurance ‘exchanges’ where individuals and small business can compare and buy health insurance coverage.***
- ***Subsidies for lower- and middle income families to buy mandated coverage – subsidies to families earning up to 400 percent of the poverty level – the subsidies being slightly more generous in the House bill than in the Senate one***
- ***Tax credits for small companies to encourage them to offer health insurance to their employees***
- ***No adverse change to existing plans for those with employer-provided health coverage***
- ***An expansion of Medicaid, and a standardization of state rules on when Medicaid coverage kicks in – in the House bill at 150 percent of the poverty level (encompassing 15 million currently uninsured Americans); in the Senate bill at 133 percent of poverty levels (encompassing 13 million currently uninsured Americans)***
- ***Cuts in payments to Medicare Advantage, but elimination of Medicare co-payments on preventive services.***
- ***Minimum standards of coverage in all plans, including eventually bans on companies denying coverage for pre-existing conditions, and bans on insurance companies denying coverage or raising premiums for people when they become ill.***
- ***An extension of coverage for young people under their parents’ existing policies – to age 26 in the House bill, or 27 in the Senate version.***

- *No major changes to current medical malpractice law – a central concern of the Republican Party, among others – although the Senate version does include a ‘demonstration project’ designed to test, on a small scale, unspecified malpractice law reform*
- *Pre-existing medical conditions to be immediately addressed through the creation of a temporary national high-risk pool for those denied coverage previously (or unemployed for the previous six months)*
- *Both bills also focus strongly on prevention (wellness) and effectiveness (quality) research in the health care system.*

Big Issues still in Dispute

1. The Public Option¹

- The House bill contains a public health insurance plan option, available within the exchanges and across the country. The public option will have different categories of plan – a basic package, plus others with varying levels of cost-sharing and supplementary services. The Senate bill does not go that route at all. It simply gives the Office of Personnel Management (the agency overseeing the Federal Employee Health Benefits Program enjoyed by members of Congress) responsibility for the oversight of at least one national non-profit plan in the exchange, and one for-profit plan. These new national plans will be contracted with private insurers.

2. Paying for the Changes

- In the House version, individuals earning more than \$500,000 a year, and families earning more than \$1 million, will pay an extra 5.4% income tax. In the Senate version, insurers will pay a 40% excise tax on so called “Cadillac” plans (those valued at more than \$23,000 a year for a family or \$8,500 for an individual), and an annual \$2+ billion fee will be levied on each of the pharmaceutical and medical device manufacturing sectors.

3. Employer Requirement

- In the House version, employers with annual payrolls over \$750,000 must offer coverage to their employees or pay a sum equivalent to 8 percent of their payroll into a Health Insurance Exchange Trust. (Smaller employers pay a smaller sum, or no sum at all, depending on their size.) In the Senate version, employers with more than 50 employees will pay \$750/employee if they fail to offer coverage, and those employees will receive federal help to buy coverage on an individual basis.

4. The Stupak Amendment

¹ For more on the differences between ‘exchanges’ and ‘public plans’, see Michael S. Lawlor at <http://docs.google.com/Doc?docid=0ASL75IVsLb5YZGN2cmZzZHNfNGY3YmZmemRr&hl=en>

- In the House version, insurance companies participating in the exchanges will be prohibited from offering plans that include abortion coverage unless it is in the form of a supplemental plan that consumers can purchase only with their own funds. Insurance plans will be banned from including abortion coverage if even a single person buying the plan is receiving a federal subsidy to help her do so. In the Senate version, people receiving a federal subsidy can purchase a plan that includes abortion coverage but only if they pay for the abortion part with their own money in a separate personal check. The Senate bill allows states to ban the coverage of abortion by health plans sold on the new exchanges. (It will remain the case, as now, that federal funding for abortion will be available in cases where continued pregnancy threatens the life of the mother or is the result of incest or rape.)

The Devil in the Detail

5. *Will subsidies ensure that all Americans will be able to afford health care coverage?*
 - No, in neither bill is that the case. The CBO estimate that under the House bill 96% of legal US residents under age 65 will be covered. For the Senate bill, the estimate is 94%. (Currently 83% of legal US legal residents of working age have health cover.) Subsidies decline (cost-sharing increases) as incomes rise, and end entirely when income reaches 400% of the federal poverty level (The federal poverty level varies by family size. It is currently \$18,310 for a family of three.)
6. *What will the fine be on those who fail to buy coverage?*
 - In both bills the schedule of fines is complicated. In the Senate version, by 2016 the fine will be up to \$750 or 2% of income, whichever is the higher. Each bill requires confirmation on your tax returns that you have health coverage, and excludes the very low-paid from any penalty. The groups most vulnerable to fines are likely to be those just about the Medicaid threshold (earning 133/150% of the federal poverty level) – too well-paid to receive free health care, too poor to be able to afford even its subsidized purchase.
7. *Will there be a Medicare Board?*
 - Not in the House version, but definitely in the Senate version – a board charged with recommending ways of trimming Medicare spending as it grows.
8. *Will insurers be able to vary charges by category of customer?*

- The answer is yes in both bills. The House bill is stricter, allowing them to charge older customers no more than twice the charge on younger ones. The Senate bill is less restrictive.
9. *Will there be one national exchange or 50 separate state exchanges?*
- The House bill has one, the Senate bill has 50.
10. *Will illegal immigrants be covered?*
- No, in neither bill. The House version excludes undocumented workers from receiving low-income insurance subsidies. The Senate version goes further, denying undocumented workers the right to purchase insurance through the exchanges, even with their own money.
11. *Will insurance companies be allowed to impose annual benefit caps – increasing the risk of medically-induced personal bankruptcy (in 2007 the cause of 62% of such bankruptcies)*
- Even in the Senate bill, insurers, beginning in 2014, will not be allowed to cap annual or lifetime benefits. In the House bill, it is out-of-pocket expenses that are capped for low-income families: at no more than \$5000 a year for an individual and \$10,000 for a family earning 400% of the federal poverty level (with lower caps for families on even lower incomes).
12. *At what rate will health care providers be reimbursed by the non-profit plan on the exchange?*
- In the House version the Public Plan would set reimbursement rates based on a percentage of the Medicare fee schedule. Conservative opponents in the Senate objected to this because Medicare fees are already lower than private payers pay. Hence in the final Senate Bill the fees of the non-profit plans in the exchange are prohibited from basing their fees on the Medicare rates
13. *When will all these changes begin?*
- Many changes will come into effect immediately, but the big ones will be phased in, to ease the problems of transition. The key date in the House bill for the creation of exchanges and the ban on denials for pre-existing conditions is 2013. The equivalent date in the Senate version is 2014.

So there is still much in play – both big things and little – and no guarantee yet either that a final bill will pass or that, if it does, the scale of its achievements will match the effort expended on its creation. For those reasons if for no other, maybe this is not the time to impose a personally-adopted complete news blackout. Perhaps instead it is time to follow the news as closely as possible and to attempt to shape its outcome by writing an avalanche of letters to our members of Congress. Time to go to the mattresses again!

ⁱ Mike Lawlor's writings on health care reform can be accessed at <http://lawlorhealthreform.blogspot.com/>

Rebecca Matteo's teaching on health care reform is described at <http://www.wfu.edu/wowf/2009/20091223.healthcare.php>

David Coates' writings on health care reform can be found in *Answering Back: Liberal Responses to Conservative Arguments*, New York: Continuum Books, 2009) and at

<http://answeringbackdavidcoates.blogspot.com/>

See also <http://healthcarelive.wordpress.com> for Wake Forest faculty and student commentary on health care reform.