

## **Facts are Stubborn Things: Implications of H.R. 3200**

*H.R. 3200 “America’s Affordable Health Choices Act of 2009”*

*As Introduced by Reps. Dingell (D-MI), Waxman (D-CA), Rangel (D-NY), Stark (D-CA), Andrews (D-NJ), and George Miller (D-CA)*

### **How H.R. 3200 Allows Coverage for Illegal Aliens:**

1. ***Does Not Require Proof of Citizenship to Obtain Health Services:*** While Section 246 (page 143) of the bill expressly prohibits illegal aliens from receiving government-run healthcare, the bill does not include a specific requirement that a person prove his or her citizenship in order to obtain affordability credits, which means that illegal aliens could obtain coverage. Section 152 states that “all health care and related services (including insurance coverage and public health activities) covered by this Act shall be provided without regard to personal characteristics extraneous to the provision of high quality health care or related services”. This provision has the potential to include illegal immigrants because it may interpret “personal characteristics” to include legal status. **(Pages 50-51, 143)**
2. ***Requires That If One Family Member Is Covered, All Members Covered:*** Another provision states that if one member of a family is afforded coverage all members **would** have coverage, thereby creating another loophole to give taxpayer-subsidized health care to illegal aliens. If a child of illegal aliens is born in the United States, then the entire family becomes eligible for coverage. **Page 133**
3. ***Requires Free Translation Services:*** Sections 1222 of the bill will provide free translation services and interpreters to those who are not proficient in English. Section 1728 amends SCHIP to provide translation services to children of families and other individuals for whom English is not the primary language. **Pages 408-418 and 782**

### **How H.R. 3200 Gives Government Control of Private Options:**

4. ***New Government “Exchange Program”:*** Requires the Secretary of Health and Human Services (HHS) to establish a government run plan that is supposed to play by the same rules as private plans in the exchange. The bill, however, requires the government to set the benefits and coverage rules of all of the plans, including its own, creating an implicit unlevel playing field by allowing the government to set rules for itself. **Pages 116-118; Section 221**
5. ***“Health Choices Commissioner” is a Political Appointee:*** H.R. 3200 would establish a new government-run “Exchange,” through which a new government-run plan would offer coverage alongside private plans. The Exchange would be run by a new “Health Choices Commissioner,” who is nominated by the President and confirmed by the Senate. As the Commissioner is serving at the pleasure of the President, some may be concerned about the lack of independence of this individual. The Commissioner would also be required to work with the Secretary of HHS, creating the potential for a serious conflict of interest that could significantly disadvantage the private health plans. **Pages 41-47; Division A, Sections 141 and 143**
6. ***Government Committee Determines What Benefits Are Available (Treatments, Drugs, Devices, etc):*** This section requires the Commissioner to specify what benefits can be made available under the private plan and the public plan in the Exchange. Of the four plan types

permitted by the bill, the government will dictate what benefits will be allowed and in fact mandates that three of the four types have exactly the same benefits. **Page 84; Section 203 and Page 85; Section 203, line 7**

- 7. *Private Insurers Forced to Comply with New Coverage and Underwriting Rules:*** Requires private insurers to comply with new coverage and underwriting rules in order to offer insurance products both inside and outside of the new national and state insurance exchanges. Insurance plans existing outside of the exchange would be prohibited from allowing new individuals to enroll. **Multiple Sections, e.g. Sections 112, 113, 116, 121, 122, 123, 124**

#### **How H.R. 3200 Would Create New Government Plan to Compete With Private “Exchange” Plans:**

- 8. *Government Committee Decides What Prescription Drugs Are Covered:*** The Secretary of HHS would decide which prescription drugs are made available in the government plan. The bill also requires the Secretary to negotiate drug prices for the government-run plan that are not covered by Medicare. This will impose price controls and eliminate competition in the market, a key reason why prices under Medicare Part D have decreased. The Government Committee will determine prescription drug benefits for private plans as well. **Page 122; Section 223, lines 14-17 Page 122; Page 33**
- 9. *Government Committee Determines Covered Treatments and Services:*** The bill establishes a Health Benefits Advisory Committee to make determinations including “categories of covered treatments, items and services within benefit classes and cost sharing.” **Page 30; Section 123**
- 10. *Government Plan Would Pay Hospitals and Doctors At Medicare Rates (Below Cost):*** The bill establishes a new government-run plan which would pay hospitals and doctors at Medicare rates for their services. Given that Medicare significantly underpays providers, private plans would be left to pick up the slack and those with private plans will subsidize those in government plans. **Pages 116-128; Division A, Title II, Subtitle B**
- 11. *Government Plan Sheltered From Judicial Review:*** This section shelters the government plan from any administrative or judicial review of any payment rate or methodology it uses. No company can sue the government for price fixing. **Page 124, lines 24-25; Section 223**
- 12. *Only Sue Government Plan In Federal Courts:*** Unlike private insurance plans, who can be sued in state courts, the government-run plan could only be sued in federal court. This affords the government plan significant advantage over the plans it is supposed to “compete” against. **Page 118, lines 14-22; Division A, Section 221(g)**

#### **How H.R. 3200 Will Increase Taxes:**

- 13. *New Tax on Health Insurance Policies:*** The bill would establish a new tax on every health insurance policy to fund a government board that would be tasked with deciding which treatments are more cost-effective. The research findings would be used by the government to ration care. This new tax will increase the cost of health insurance for every American not on Medicare or Medicaid. **Pages 823-835; Division B, Section 1802**

- 14. 2.5% Income Tax Increase on Individuals Without Health Insurance:** The bill establishes a new tax on individuals of almost 2.5 percent of their income if they don't purchase health insurance the government deems acceptable. **Pages 167-169**
- 15. New Surtaxes On Individuals Go Into Effect Before Low-Income Subsidies for Health Care Start (Referred to on #16 below):** The surtax takes effect starting in 2011, but the low-income subsidies for health care start in 2013 and grow rapidly thereafter. This means that, on a year-by-year basis, the bill is not fully paid-for, raising real concerns about the long-term impact of this proposal on the deficit. **Page 197; Section 441**
- 16. Tax Increases For High Income Individuals:** Taxes would be increased by 1% for gross income exceeds \$350,000, 1.5% for gross income over \$500,000, and 5.4% for gross income over \$1,000,000. **Pages 197-198**

**How H.R. 3200 Will Hurt Small Businesses:**

- 17. 8% Payroll Tax on Employers Who Can't Afford to Offer Health Insurance to Employees:** The bill imposes a new eight percent payroll tax on employers who can't afford to offer health insurance to their employees; employers who do the right thing and offer health coverage to their employees but it's deemed "insufficient" by the government; employers who offer "sufficient" coverage but the employee enrolls in coverage elsewhere (e.g. coverage through a spouse's employer); and employers who aren't paying at least 72.5 percent of an employee's premium (65 percent for family coverage). **Pages 149 and 183; Sections 313 and 412 and Page 146, lines 3-13; Section 312**
- 18. Small Business Subsidies Encourage Businesses To Keep Wages Low:** Under the bill, small businesses could receive subsidies to cover a portion of their health care costs. However, to receive a full subsidy, the average employee income must be below \$20,000 and have fewer than 10 employees. This creates an incentive to keep wages low and to not hire new workers. **Page 189; lines 6-12; Division A, Section 421 (b)(2)**
- 19. Small Business Exclusion from 8% Payroll Tax Not Sufficient:** The bill includes a "small business exclusion" from the eight percent payroll tax, but the definition of small business in the bill leaves a large number of small businesses subject to the full eight percent tax. Because the exclusion only applies to those small businesses with a payroll of less than \$250,000 each year, on average, small businesses with as few as 12 employees would be subject to a new payroll tax through the bill if they could not afford to provide coverage. Worse, the bill does not index to inflation the amounts which trigger the "small business exemption" meaning that Democrats have built into the bill a mechanism that capture and subject increasingly more small employers to the eight percent tax over time. **Page 150; lines 9-13; Section 313**
- 20. \$500,000 Fine and \$100 a day on Employers for Providing "Insufficient Coverage":** This section imposes finer of up to \$500,000 on employers who make an honest mistake, thinking they had provided what the government deemed "sufficient" coverage. This section imposes finer of \$100 per employee per day on employers who do not offer a level of health coverage that is "government-approved" (employers would pay this fine every day until the oversight is corrected). **Page 157; line 22; Division A, Section 321 (b)(2)(C)(iii)(II), Page 155; Division A, Section 321 (b)(2)**

**21. *Employee Salary Cannot Be Reduced To Provide New Health Care Benefit:*** The bill mandates that employer contributions cannot come through salary reductions. Under this section, employers have to make a minimum contribution toward the health benefits plan premium for both full-time and less than full-time employees. By the terms of this provision, they cannot take that contribution out of an employee's salary. That defies logic since any contribution that an employer makes toward a health care premium is necessarily money it cannot pay to its employees in salary. **Page 147**

**22. *New Requirement for "Prevailing Average Employer-Sponsored Coverage":*** The bill requires that benefits must be equivalent to average prevailing employer coverage. Businesses will not be free to vary the mix of benefits available to see which ones attract employees best; instead, they will have to offer a certain minimum level of health benefits regardless of the demonstrated preferences of their employees (for higher salaries in lieu of pricier health benefits, for example). **Pages 26-27**

#### **How H.R. 3200 Can Provide Federal Funds for Abortions:**

**23. *Bill Language Does Not Specifically Exclude Abortion As an "Essential Benefit":*** This section defines what would be deemed an "essential benefits package," or in other words, what the government sets as benefits or services that must be covered by an insurance plan. This section, however, contains no explicit exclusion or prohibition from abortion being deemed part of an essential benefits package. Without such a federal exclusion, under current law and under this bill, funding would be used for abortions as an essential benefit. **Page 26; Section 122**

**24. *If Government Commission Determines Abortion is an Essential Benefit, Providers Would Be Required to Pay for Abortions:*** This section requires that plans that use a provider network for health services must meet the standards set forth by the Commissioner to assure the adequacy of the network for plan enrollees to receive covered services. If abortion becomes an essential benefit provider networks would be required to ensure – including by establishing abortion clinics – that abortion services are available. If this bill does not expressly prohibit federal funding for abortions, under current law and under this bill funding would be used for abortions. **Page 24; Section 115**

#### **How H.R. 3200 Eliminates Choices for Patients and Undermines Rights:**

**25. *Automatic Enrolling Into Government Sanctioned Health Care Plans:*** This section requires the Commissioner to automatically enroll exchange-eligible individuals into a government sanctioned plan. The bill says the Commissioner should enroll people in to plans through a "random assignment." Because the Commissioner can auto enroll exchange eligible individuals who have not elected coverage to any plan in the exchange, this provision is a defacto method for signing millions of Americans up for the government run plan. **Page 97; line 20; Section 205**

**26. *Mandated Enrollment for Medicaid-Eligible Individuals:*** This section requires that the Commissioner enroll Medicaid eligible individuals who have not elected to be part of the program into Medicaid. **Page 102; lines 12-18; Section 205**

- 27. *Government Authority Over Multi-State Exchanges:*** This section allows states to establish their own exchange or join together with other states in a multi-state exchange. The bill, however, also gives the Commissioner the authority to tell states what their state or multi-state exchanges can and cannot do. **Page 115, lines 4-12; Section 208**
- 28. *Expands Medicaid Eligibility and New “Low Income” Subsidies:*** H.R. 3200 expands Medicaid eligibility to all individuals up to 133 percent of poverty and “low income” subsidies can go to a family of four making more than \$88,000. This will shift even more Americans onto the government rolls. **Page 137**
- 29. *“Advanced Care” or “End of Life Care” Counseling for Seniors:*** H.R. 3200 compels seniors (age 65) to submit to a counseling session every five years (and more often if they become sick or go into a nursing home) about alternatives for end-of-life care. The sessions cover highly sensitive matters such as whether to receive antibiotics and “the use of artificially administered nutrition and hydration.” **Page 424-430; Section 1233(a)(1)(B)**
- 30. *Disclosure of Confidential Taxpayer Information:*** There are two provisions in the bill allowing for disclosure of otherwise confidential taxpayer information. One allows the Health Choices Commissioner to calculate subsidy levels and the other allows the Social Security Administration to do outreach for the prescription drug program. **Page 194; Section 431 & Page 820, Section 1801**

**How H.R. 3200 Cuts Funding for Seniors:**

- 31. *H.R. 3200 Includes Over \$500 Billion in Cuts to Medicare Starting in 2010, such as:***
- ✓ \$32 Billion in cuts to Skilled Nursing Facilities [**Pages 223 and 228**]
  - ✓ \$5.3 Billion in cuts for Inpatient Rehabilitation Facilities [**Page 224**]
  - ✓ \$101.6 Billion in cuts for Hospitals, Skilled Nursing Facilities, Long Term Care Hospitals, Inpatient Rehabilitation Facilities, Psychiatric Hospitals, and Hospice Care [**Page 224**]
  - ✓ \$10.2 Billion in cuts to Medicare Disproportionate Share Hospitals [**Page 234**]
  - ✓ \$40.1 Billion in cuts to Outpatient Hospitals, Ambulance Service, Ambulatory Surgical Centers, Laboratory Services, and Durable Medical Equipment [**Page 265**]
  - ✓ \$4.3 Billion cut in payments for Imaging Service [**Page 273**]
  - ✓ \$49.1 Billion in cuts for Home Health Care [**Pages 307 and 308**]
  - ✓ \$171.8 Billion in cuts to Medicare Advantage [**Pages 331 and 341**]