

Facts are Stubborn Things: Implications of H.R. 3962

H.R. 3962 “Affordable Health Care for America Act”

How H.R. 3962 Allows Coverage for Illegal Aliens:

- 1. Does Not Require Proof of Citizenship to Obtain Health Services:** While Sections 341 and 347 (**pages 221-230**) of the bill prohibit illegal aliens from receiving government-run health care, the bill does not include a specific requirement that a person prove his or her citizenship in order to obtain affordability credits, which means illegal aliens could obtain coverage. Rather, the bill simply requires a “declaration of citizenship or lawful immigration status” that is in a form specified by the Health Choices Commissioner that is in line with 1137(d)(1) of the Social Security Act. In plain language, this law requires a declaration by the individual in writing that he or she is a citizen—along with a social security number (SSN).

This is problematic, however, because a SSN can easily be stolen and the Social Security Administration is not required to verify the person is who they say they are. Further, an SSN issued to a noncitizen does not automatically change to reflect an expired visa. These loopholes could allow illegals to obtain taxpayer-subsidized health care.

Also, Section 252 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. **Page 142**

- 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 could become eligible for coverage. **Page 247-248**
- 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 1723 amends SCHIP to provide translation services to children of families and other individuals for whom English is not the primary language. **Pages 617-632 and 1,061**

How H.R. 3962 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 103-118; Section 221 - 224**
- 5. “Health Choices Commissioner” is a Political Appointee:** H.R. 3962 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 under a new independent agency of the executive branch called “Health Choices Administration”. The head of this

administration, the “Health Choices Commissioner,” will be 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 131-132; Sections 241**

- 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 111, Section 223; Page 169, Section 303**
- 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. 212, 213, 221, 222, 223**

How H.R. 3962 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. **Section 323, page 216**
- 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.” **Section 223, page 111**
- 10. Government Plan Could Force Hospitals and Doctors to Accept Payment at Medicare Rates (Below Cost):** The bill establishes a new government-run plan which would have rates negotiated by the Secretary of Health and Human Services. The bill allows the Secretary to underpay providers and force them to accept Medicare rates. 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. **Division A, Title III, 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. **Section 323, pages 218**

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 213 Section 321(g)**

How H.R. 3962 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. **Section 1802, page 1162**

14. 2.5% Income Tax Increase on Individuals Without Health Insurance: The bill establishes a new tax on individuals of 2.5 percent of their income if they don’t purchase health insurance the government deems acceptable. **Section 501, page 297**

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. **Section 551, page 339**

16. Tax Increases For High Income Individuals: Taxes would be increased by 5.4% for gross income over \$500,000 for individuals, and \$1,000,000 for couples. **Section 551, page 337**

How H.R. 3962 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). The new tax however, is not indexed for inflation in the exact same way that the AMT tax wasn’t indexed for inflation, meaning more and more tax payers are going to be subject to this tax every year. **Sections 412, 413, 512**

The applicable percentage is:

Does not exceed \$500,000	0 percent
Exceeds \$500,000, but does not exceed \$585,000	2 percent
Exceeds \$585,000, but does not exceed \$670,000	4 percent
Exceeds \$670,000, but does not exceed \$750,000	6 percent
Exceeds \$750,000	8 percent

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, no employee may make over \$80,000, and the business must have fewer than 10

employees. This creates an incentive to keep wages low and to not hire new workers.
Section 521, page 318

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 \$500,000 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. **Section 413, page 276**

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). **Section 421, page 284**

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. **Section 412, page 273**

22. New Requirement for “Average Prevailing 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). **Section 222, page 105**

How H.R. 3962 Eliminates Choices for Patients and Undermines Rights:

23. 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. **Section 305, page 185**

- 24. 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. **Section 305, page 190**
- 25. 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. **Section 308, page 197**
- 26. Expands Medicaid Eligibility and New “Low Income” Subsidies:** H.R. 3962 expands Medicaid eligibility to all individuals up to 150 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. **Section 1701, page 1,012**
- 27. State’s Will Be Burdened With the Financial Responsibility of the New Mandated Medicaid Patients:** Traditionally, Medicare funding is split between the federal government and the States. This bill extends the amount of Medicaid eligible Americans, and automatically enrolls them in to Medicaid. Meaning, that this bill represents a massive new entitlement program that cash strapped States will be forced to pay for. **Title VII, Subtitle A, page 1,012**
- 28. 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 327; Section 541 & Page 1158, Section 1801**
- 29. Taxes on Health Plans:** The bill prohibits the reimbursement of over-the-counter pharmaceuticals from Health Savings Accounts (HSAs), Medical Savings Accounts, Flexible Spending Arrangements (FSAs), and Health Reimbursement Arrangements (HRAs), and increases the penalties for non-qualified HSA withdrawals from 10 percent to 20 percent, effective in 2011. **Title V, Part 3, Section 531-534**
- 30. Taxes on Medical Devices:** H.R. 3962 would impose a 2.5 percent excise tax on medical devices, beginning in 2013, raising taxes by \$20 billion. The Congressional Budget Office, and other independent experts, has confirmed that this tax would be passed on to consumers in the form of higher prices—and ultimately higher premiums. **Section 552, page 339**

How H.R. 3962 Cuts Funding for Seniors:

- 31. H.R. 3962 Includes Over \$500 Billion in Cuts to Medicare Starting in 2010, including:**
- \$23.9 Billion in cuts to Skilled Nursing Facilities
 - \$56.7 Billion in cuts to Home Health Care Providers
 - \$143.6 Billion in cuts for Hospitals, Skilled Nursing Facilities, Long Term Care Hospitals, Inpatient Rehabilitation Facilities, Psychiatric Hospitals, and Hospice Care
 - \$3 Billion cut in payments for Imaging Service
 - \$170 Billion in cuts to Medicare Advantage

How H.R. 3962 Creates New Government Bureaucracies

32. H.R. 3962 Includes 118 New Federal Bureaucracies:

1. Retiree Reserve Trust Fund (Section 111(d), p. 61)
2. Grant program for wellness programs to small employers (Section 112, p. 62)
3. Grant program for State health access programs (Section 114, p. 72)
4. Program of administrative simplification (Section 115, p. 76)
5. Health Benefits Advisory Committee (Section 223, p. 111)
6. Health Choices Administration (Section 241, p. 131)
7. Qualified Health Benefits Plan Ombudsman (Section 244, p. 138)
8. Health Insurance Exchange (Section 201, p. 155)
9. Program for technical assistance to employees of small businesses buying Exchange coverage (Section 305(h), p. 191)
10. Mechanism for insurance risk pooling to be established by Health Choices Commissioner (Section 306(b), p. 194)
11. Health Insurance Exchange Trust Fund (Section 307, p. 195)
12. State-based Health Insurance Exchanges (Section 308, p. 197)
13. Grant program for health insurance cooperatives (Section 310, p. 206)
14. “Public Health Insurance Option” (Section 321, p. 211)
15. Ombudsman for “Public Health Insurance Option” (Section 321(d), p. 213)
16. Account for receipts and disbursements for “Public Health Insurance Option” (Section 322(b), p. 215)
17. Telehealth Advisory Committee (Section 1191 (b), p. 589)
18. Demonstration program providing reimbursement for “culturally and linguistically appropriate services” (Section 1222, p. 617)
19. Demonstration program for shared decision making using patient decision aids (Section 1236, p. 648)
20. Accountable Care Organization pilot program under Medicare (Section 1301, p. 653)
21. Independent patient-centered medical home pilot program under Medicare (Section 1302, p. 672)
22. Community-based medical home pilot program under Medicare (Section 1302(d), p. 681)
23. Independence at home demonstration program (Section 1312, p. 718)
24. Center for Comparative Effectiveness Research (Section 1401(a), p. 734)
25. Comparative Effectiveness Research Commission (Section 1401(a), p. 738)
26. Patient ombudsman for comparative effectiveness research (Section 1401(a), p. 753)
27. Quality assurance and performance improvement program for skilled nursing facilities (Section 1412(b)(1), p. 784)
28. Quality assurance and performance improvement program for nursing facilities (Section 1412 (b)(2), p. 786)
29. Special focus facility program for skilled nursing facilities (Section 1413(a)(3), p. 796)
30. Special focus facility program for nursing facilities (Section 1413(b)(3), p. 804)
31. National independent monitor pilot program for skilled nursing facilities and nursing facilities (Section 1422, p. 859)
32. Demonstration program for approved teaching health centers with respect to Medicare GME (Section 1502(d), p. 933)
33. Pilot program to develop anti-fraud compliance systems for Medicare providers (Section 1635, p. 978)
34. Special Inspector General for the Health Insurance Exchange (Section 1647, p. 1000)
35. Medical home pilot program under Medicaid (Section 1722, p. 1058)

36. Accountable Care Organization pilot program under Medicaid (Section 1730A, p. 1073)
37. Nursing facility supplemental payment program (Section 1745, p. 1106)
38. Demonstration program for Medicaid coverage to stabilize emergency medical conditions in institutions for mental diseases (Section 1787, p. 1149)
39. Comparative Effectiveness Research Trust Fund (Section 1802, p. 1162)
40. “Identifiable office or program” within CMS to “provide for improved coordination between Medicare and Medicaid in the case of dual eligibles” (Section 1905, p. 1191)
41. Center for Medicare and Medicaid Innovation (Section 1907, p. 1198)
42. Public Health Investment Fund (Section 2002, p. 1214)
43. Scholarships for service in health professional needs areas (Section 2211, p. 1224)
44. Program for training medical residents in community-based settings (Section 2214, p. 1236)
45. Grant program for training in dentistry programs (Section 2215, p. 1240)
46. Public Health Workforce Corps (Section 2231, p. 1253)
47. Public health workforce scholarship program (Section 2231, p. 1254)
48. Public health workforce loan forgiveness program (Section 2231, p. 1258)
49. Grant program for innovations in interdisciplinary care (Section 2252, p. 1272)
50. Advisory Committee on Health Workforce Evaluation and Assessment (Section 2261, p. 1275)
51. Prevention and Wellness Trust (Section 2301, p. 1286)
52. Clinical Prevention Stakeholders Board (Section 2301, p. 1295)
53. Community Prevention Stakeholders Board (Section 2301, p. 1301)
54. Grant program for community prevention and wellness research (Section 2301, p. 1305)
55. Grant program for research and demonstration projects related to wellness incentives (Section 2301, p. 1305)
56. Grant program for community prevention and wellness services (Section 2301, p. 1308)
57. Grant program for public health infrastructure (Section 2301, p. 1313)
58. Center for Quality Improvement (Section 2401, p. 1322)
59. Assistant Secretary for Health Information (Section 2402, p. 1330)
60. Grant program to support the operation of school-based health clinics (Section 2511, p. 1352)
61. Grant program for nurse-managed health centers (Section 2512, p. 1361)
62. Grants for labor-management programs for nursing training (Section 2521, p. 1372)
63. Grant program for interdisciplinary mental and behavioral health training (Section 2522, p. 1382)
64. “No Child Left Unimmunized Against Influenza” demonstration grant program (Section 2524, p. 1391)
65. Healthy Teen Initiative grant program regarding teen pregnancy (Section 2526, p. 1398)
66. Grant program for interdisciplinary training, education, and services for individuals with autism (Section 2527(a), p. 1402)
67. University centers for excellence in developmental disabilities education (Section 2527(b), p. 1410)
68. Grant program to implement medication therapy management services (Section 2528, p. 1412)
69. Grant program to promote positive health behaviors in underserved communities (Section 2530, p. 1422)
70. Grant program for State alternative medical liability laws (Section 2531, p. 1431)
71. Grant program to develop infant mortality programs (Section 2532, p. 1433)
72. Grant program to prepare secondary school students for careers in health professions (Section 2533, p. 1437)
73. Grant program for community-based collaborative care (Section 2534, p. 1440)
74. Grant program for community-based overweight and obesity prevention (Section 2535, p. 1457)

75. Grant program for reducing the student-to-school nurse ratio in primary and secondary schools (Section 2536, p. 1462)
76. Demonstration project of grants to medical-legal partnerships (Section 2537, p. 1464)
77. Center for Emergency Care under the Assistant Secretary for Preparedness and Response (Section 2552, p. 1478)
78. Council for Emergency Care (Section 2552, p. 1479)
79. Grant program to support demonstration programs that design and implement regionalized emergency care systems (Section 2553, p. 1480)
80. Grant program to assist veterans who wish to become emergency medical technicians upon discharge (Section 2554, p. 1487)
81. Interagency Pain Research Coordinating Committee (Section 2562, p. 1494)
82. National Medical Device Registry (Section 2571, p. 1501)
83. CLASS Independence Fund (Section 2581, p. 1597)
84. CLASS Independence Fund Board of Trustees (Section 2581, p. 1598)
85. CLASS Independence Advisory Council (Section 2581, p. 1602)
86. Health and Human Services Coordinating Committee on Women's Health (Section 2588, p. 1610)
87. National Women's Health Information Center (Section 2588, p. 1611)
88. Centers for Disease Control Office of Women's Health (Section 2588, p. 1614)
89. Agency for Healthcare Research and Quality Office of Women's Health and Gender-Based Research (Section 2588, p. 1617)
90. Health Resources and Services Administration Office of Women's Health (Section 2588, p. 1618)
91. Food and Drug Administration Office of Women's Health (Section 2588, p. 1621)
92. Personal Care Attendant Workforce Advisory Panel (Section 2589(a)(2), p. 1624)
93. Grant program for national health workforce online training (Section 2591, p. 1629)
94. Grant program to disseminate best practices on implementing health workforce investment programs (Section 2591, p. 1632)
95. Demonstration program for chronic shortages of health professionals (Section 3101, p. 1717)
96. Demonstration program for substance abuse counselor educational curricula (Section 3101, p. 1719)
97. Program of Indian community education on mental illness (Section 3101, p. 1722)
98. Intergovernmental Task Force on Indian environmental and nuclear hazards (Section 3101, p. 1754)
99. Office of Indian Men's Health (Section 3101, p. 1765)
100. Indian Health facilities appropriation advisory board (Section 3101, p. 1774)
101. Indian Health facilities needs assessment workgroup (Section 3101, p. 1775)
102. Indian Health Service tribal facilities joint venture demonstration projects (Section 3101, p. 1809)
103. Urban youth treatment center demonstration project (Section 3101, p. 1873)
104. Grants to Urban Indian Organizations for diabetes prevention (Section 3101, p. 1874)
105. Grants to Urban Indian Organizations for health IT adoption (Section 3101, p. 1877)
106. Mental health technician training program (Section 3101, p. 1898)
107. Indian youth telemental health demonstration project (Section 3101, p. 1909)
108. Program for treatment of child sexual abuse victims and perpetrators (Section 3101, p. 1925)
109. Program for treatment of domestic violence and sexual abuse (Section 3101, p. 1927)
110. Native American Health and Wellness Foundation (Section 3103, p. 1966)

111. Committee for the Establishment of the Native American Health and Wellness Foundation (Section 3103, p. 1968)
112. Grant program for mental health and substance abuse screening (Manager's Amendment, p. 31)
113. Centers for Disease Control Office of Minority Health (Manager's Amendment, p. 35)
114. Substance Abuse and Mental Health Services Administration Office of Minority Health (Manager's Amendment, p. 35)
115. Agency for Healthcare Research and Quality Office of Minority Health (Manager's Amendment, p. 36)
116. Health Resources and Services Administration Office of Minority Health (Manager's Amendment, p. 36)
117. Food and Drug Administration Office of Minority Health (Manager's Amendment, p. 36)
118. Outreach program to increase awareness of diabetes screening benefits (Manager's Amendment, p. 39)