



# Policy Brief

ULMAN PUBLIC POLICY & FEDERAL RELATIONS

## Health Care Reform

*The 111<sup>th</sup> Congress*

*June 19, 2009*

### *Overview*

Reform of our nation's \$2.5 trillion health care system is the top domestic priority for President Obama and Democrat leaders in the House and Senate. The President seems to have public support for the effort, with a recent poll showing a majority (55%) of Americans favoring his plan for health care reform.<sup>1</sup> In addition, while there is significant disagreement as to what reforms are appropriate, most stakeholders, including the Heritage Foundation<sup>2</sup> and the U.S. Chamber of Commerce<sup>3</sup>, agree that some health care reform is needed. At the same time, however, growing concerns over the federal government's budget deficit may hamper the Democrats' effort to move forward with health care reform, which is estimated to cost the government well over a trillion dollars over the next ten years. In fact, recent polls show Americans are more concerned with fixing the budget than reforming health care.<sup>4</sup> The cost and other

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<sup>1</sup> According to a recent Wall Street Journal/NBC News poll, 55% said they favored the Obama plan when given several details of his approach, versus 35% who were opposed. The survey of 1,008 adults was conducted June 12, 2009 – June 15, 2009 and had a margin of error of plus or minus 3.1 percentage points for the full sample. On June 18, 2009, the poll results were available at <http://online.wsj.com/article/SB124527518023424769.html#mod=testMod>.

<sup>2</sup> The Heritage Foundation said in a May 15, 2009 paper entitled *A Principled Path to Rational Health Care Reform*, "[t]here is little disagreement that the current health care system needs an overhaul," on June 18, 2009, available at <http://www.heritage.org/Research/HealthCare/wm2448.cfm>

<sup>3</sup> The U.S. Chamber of Commerce said in the June 16 paper *Health Care Reform--The Devil Is in the Details*, "The U.S. Chamber has been a consistent advocate for health care reform. While most people agree that reform is vital, the devil has always been in the details." The Chamber went on to state, "The Chamber agrees that the time for health care reform is now. We have been a consistent advocate for the expansion of health care IT, an emphasis on prevention and wellness, and pay-for-performance. Sen. Kennedy's bill has some positive aspects, such as health care Gateways (allowing one-stop shopping for health insurance) and guaranteed coverage without regard to preexisting conditions." On June 18, 2009, available at <http://www.uschambermagazine.com/content/090616.htm>.

<sup>4</sup> See herein note 1, finding that "a solid majority -- 58% -- said that the president and Congress should focus on keeping the budget deficit down, even if it takes longer for the economy to recover." See also, a June 2, 2009 Rasmussen poll found 36% of U.S. voters say cutting the deficit is the most important of the four priorities the President cited in a speech to Congress compare to only 24% rate health care reform as the most important priority, on June 18, 2009, available at [www.rasmussenreports.com/public\\_content/politics/obama\\_administration/may\\_2009/voters\\_put\\_more\\_emphasis\\_on\\_deficit\\_cutting\\_over\\_health\\_care\\_reform](http://www.rasmussenreports.com/public_content/politics/obama_administration/may_2009/voters_put_more_emphasis_on_deficit_cutting_over_health_care_reform).



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controversial aspects of the proposed reform policies present significant obstacles to reform, leaving many close to the issue less than optimistic about enactment. For example, former Senate Majority Leader Tom Daschle (D-SD), and President Obama's first nominee to be the Secretary of HHS, has [said](#) publicly that health care reform has a 50-50 chance at best.

### *Justifications for Reform*

The two primary complaints levied against the current U.S. health care system are its cost, which continues to increase at a rate well above inflation and is already greater than that of other industrialized nations, and that nearly [46 million Americans \(around 15% of the population, which is approximately 307 million\)](#) do not have health insurance coverage.

With respect to the uninsured, a closer review of the data reveals some explanation for the rather large number. [According to the U.S. Chamber:](#)

- an estimated 11 million people are currently eligible for government-subsidized or free insurance but not enrolled;
- about 15 million of the 46 million uninsured have high enough incomes that they likely could afford insurance, if they chose to purchase it;
- nearly another 9 million of the uninsured are non-citizens;
- that leaves 8-10 million U.S. citizens that may not be able to afford insurance, but do not qualify for government assistance.

The Chamber also notes, employers already “voluntarily provide health benefits to over 178 million Americans,” – well over half of the U.S. population.

Policymakers have expressed an interest in reducing the number of uninsured persons for a variety of reasons – some of them humanitarian and others financial. One of the primary financial justifications is that insuring more individuals reduces the “free rider” problem where uninsured persons utilize health care services but do not pay for those services. The resulting costs are borne by taxpayers in the form of higher taxes and by the insured in the form of higher premiums. The Cato Institute [reports](#) that estimates generally place the cost of uncompensated care at between 1.7 and 5 percent of overall health care expenditures.

A closer look at costs is also enlightening. The Heritage Institute [finds](#) that expenditures attributed to health care are approximately \$2.4 trillion – or 17% of U.S.



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GDP – and the government already accounts for almost one-half of all health care spending. [According to the National Coalition on Health Care](#) that number is projected to grow to 20% in 2020. The U.S. Chamber [reports](#), “employers are currently spending over \$500 billion on health benefits each year.” A recent [study](#) by the Kauffman-Rand Institute for Entrepreneurship Public Policy found that from 2000 to 2005 the economic burden of providing insurance increased for employers but especially so for the smallest firms.

While the overall cost of health care can appear staggering, the rates/premiums can also fluctuate wildly. According to Hewitt, in 2008, the average health care costs for employers increased 6% and is projected to increase an average of 6.4% in 2009. Rate increases can be particularly acute for those with individual coverage or who participate in small-group plans, where high cost usage by one member (e.g., an expensive treatment or surgery) can increase the risk for the group. As with all insurance, higher risk leads to higher rates. Because in small groups each participant is responsible for a greater proportion of overall group risk than in larger groups, the rate increase for each individual can be substantial. For example, if a small business offers coverage to 10 employees and one undergoes an expensive surgery in 2008, the insurer may deem group’s increase risk justifies an increase in the group’s rate. Thus, each group member would bear 1/10 of the increase. If the group were increased to 20 employees, each would need to 1/20 of the increase and so on. This fluctuation makes financial planning more difficult and providing insurance less attractive.

### *Reform Concepts*

While there is broad agreement for maintaining employer-provided healthcare, the largest outstanding issue is whether or not to include a government-run insurance plan as part of reform (aka, the public option). The government plan would compete with private insurers in a proposed insurance exchange.

The exchange would essentially act as an informational clearing house assisting exchange users with comparing benefits and prices among various plans. Specifically, the exchange is designed to assist those without employer provided insurance, who purchase from the individual market, and small businesses, who purchase small group plans. The hope is that the exchange would increase transparency for quality, cost, and coverage, which in turn would decrease the transaction cost of changing plans and reduces the impact of actuarial fluctuation for individuals and small firms.



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Congress has discussed several iterations of the public option it may want to include in the exchange, such a Medicare-based plan, a plan run by a government appointed panel or a plan backed by entitlement funding. Republicans, and much of the business community, believe a public option would drive private insurers out of business and inevitably lead to a single government-run healthcare system, seen in Canada and many European countries.

Because a public option would be subsidized by taxpayers and able to dictate terms to its competitors, the government option would inexorably trend toward being the only option. As one critic has argued, “it’s like being a player and a referee in the same game.” Thanks to taxpayer subsidies, the public option would appear less expensive to many individuals who would drop their private insurance for the taxpayer dole. A major [study](#) from the Robert Wood Johnson Foundation found that the shift from private to public insurance in such instances “seems inevitable.” Yet advocates, including the President, say the system could be set up fairly so that it would not favor the government-run plan, while still adding a choice for people in parts of the country with limited private options, and see it as the only way to keep private insurance premium down.

The public plan debate and the costly Congressional Budget Office (CBO) estimates of the Senate health care proposals have spurred on the latest discussion for an alternative to a government-run plan with a member-owned cooperative system proposed by Sen. Kent Conrad (D-ND). The co-op proposal would create nonprofit health insurance cooperatives as competitors to private insurers. According to the proposal, the co-ops would be:

- subject to the same rules as private insurers;
- democratically controlled by members;
- governed by an elected board; and
- set up so that surpluses would be returned to members or reinvested to allow for lower premiums or better benefits.

The Conrad co-op option would reportedly be budget neutral because federal spending would only come in the form of one-time discretionary start-up funding that does not fall under mandatory, long-term spending. While the business community has been fairly quiet on the co-op system, they have voiced a couple concerns relating to proposed governance.



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To avoid problems experienced by Fannie and Freddie, where oversight appears to have been pro-forma, some haven recommended that a co-op board have significantly more oversight authority. Another major concern is the interaction of co-op plans, broken down by state, and private state-based insurance plans (non-ERISA plans). As a federal program run through the states, the co-op system would be required to set state minimum rates that would then apply to the state plans that currently vary from state to state. Thus, the co-op rate could end up “pre-empting” the rates currently set by individual states, causing significant disruption to the existing state insurance system.

Other contentious issues include mandates requiring employers to provide insurance to employees or pay a fee (pay-or-play mandates), requiring individuals to purchase insurance, the creation of a “Medical Advisory Council” to establish rules for health insurance benefits and how a new system would be financed.

The business community has been particularly vocal in its opposition to pay-or-play mandates, which would require employers to provide a government-set level of health insurance or pay a fee to a government system. Employer groups oppose such mandates because are they would have a negative impact on businesses of all sizes, workers and the economy. Indeed, a [study](#) examining a proposed insurance mandate in California found that the mandate would cost employers \$6,500 per newly covered uninsured employee; that “even under the most expansive employer mandate ... close to 40 percent of the uninsured are still unlikely to be covered”; and “over the long run, much of the mandate’s cost to employers would have been shifted back to employees in the form of lower wages.” The passage of such a plan in Massachusetts has led to increased deductibles and co-pays for subsidized plans and by 2009 the state was forced to raise taxes to fund, in part, the health care mandate.

Many groups also have expressed concerns with the costs of the possible reform and the Senate Finance and House Ways and Means Committees are looking at various ways to raise the funds to pay for a health care overhaul (aka the pay for). One of the more controversial proposals is a cap on the tax exclusion of employer-provided health care coverage valued at more than 110% of the Federal Employee Health Benefit Plan that would to raise \$306 billion. This would in effect act as a tax increase on employers who provide more-generous benefits, which would have the effect of making such coverage more costly and less attractive.



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The committees also are considering a tax of 10 cents per can on sweetened beverages to raise \$112 billion, an increase in alcohol taxes to raise \$61.5 billion, and new employer payroll tax of 3 percent on employer health care expenditures to raise \$200 billion.

According to a recent [poll](#), the public favors proposals to pay for health care reform by requiring all Americans to get insurance, to raise taxes on the rich and, to a lesser extent, to require all but the smallest businesses to offer insurance or pay into a fund.

### *State of Play*

Five committees in total, two in the Senate and three in the House, have been developing health care proposals since this spring. The month of June has been earmarked by House Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Harry Reid (D-NV) to begin the roll out of the proposals, with mark ups in committee and efforts to combine the various proposals to ensure a bill can reach the House and Senate floor for a vote before the August recess, in order to work through a conference committee on the different bills in September and make it to the President's desk by October. As the committees begin to release language and their timelines begin to slip, some do not share the optimism of the President and other Democrat leaders that health care reform is feasible. Former Senate Majority Leader Tom Daschle (D-SD), and President Obama's first nomination to be the Secretary of HHS, has spoken publicly that health care reform has a 50-50 chance at best. The major sticking point issues, addressed above, have caused the initially unified conversation to deteriorate to become quite partisan.

### Obama Administration

President Obama has played a significant role in shaping the debate on the issue by creating two different Offices of Health Reform, one in the Department of Health and Human Services and the other in the White House, to work closely with congressional leaders and guide the drafting of legislation. He has also been very vocal about the importance of overhauling the healthcare system in town hall meetings and [radio addresses](#) and has laid out an October 15 deadline by which he wants congress to pass legislation and send to his desk to sign into law.

In recent weeks, the President has increased his involvement in health care negotiations. Among other things, he has specifically come out in favor of the most controversial issue on the table, a public health insurance plan option. Escalating the debate, Obama sent a [letter](#) to the Chairmen of the Senate Finance Committee and



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Senate Health, Education, Labor and Pensions Committee, Sen. Max Baucus (D-MT) and Sen. Ted Kennedy (D-MA), encouraging them to include a public plan as part of health care reform legislation. He even addressed the American Medical Association on June 15 pushing them to support a public plan.

All of the administration's resources, down to grassroots operations, have now been activated to push the President's health care priorities. On June 6, [Organizing for America](#), the grassroots advocacy network that the President's election campaign set up, held their "[Health Care Organizing Kickoff](#)" to rally citizens around the President's push for a comprehensive health reform package.

### U.S. Senate

The Senate Finance Committee and the Health, Education, Labor and Pensions (HELP) Committee have been working steadily the past few months on separate pieces of health care legislation with the intention of merging the two bills on the Senate floor prior to the August recess. Thus far the Democrats and Republicans in the Senate have worked together much more closely than in the House, in large part due to an agreement adopted early in this session that allows the Senate to consider health reform legislation under fast-track budget reconciliation procedures if the Senate has not otherwise acted by October 15. The agreement gives Democrats the ability to pass a health care overhaul with only 50 votes, but that will also give them sole responsibility for a final bill that may not be popular with many Americans.

### *HELP Committee*

The Senate HELP Committee released their 615-page draft proposal, the [Affordable Health Choices Act](#), last week and began a two week mark up of the bill on June 17. The [summary](#) of the bill and a [briefing paper](#) for the committee on the bill that has been circulating for the most part mirrors the bill, except for the large sections that were omitted on a public insurance option, an employer mandate, and rules governing generic biologics. Senator Chris Dodd (D-CT) has been managing the issue on behalf of HELP Chairman Ted Kennedy, who has been undergoing cancer treatment. Dodd claims they omitted the language to give Democrats and Republicans more time to reach a compromise on those more controversial issues. HELP Democrats were expected to unveil specific language on the omitted provisions on June 18, once they were underway with the mark up of the proposal, but have yet to do so. More than a hundred amendments to the bill were filed that the committee will work through over the next two weeks.



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Some of the highlights of the Kennedy bill include:

- a mandate requiring individuals to purchase insurance with the federal government providing aid/premium assistance for those who cannot afford coverage;
- the creation of “American Health Benefit Gateways”, or clearinghouse, in each state, modeled after the Federal Employees Health Benefits Plan, to help qualified individuals and employers shop for health insurance (from qualified health plans, including at least one government-sponsored plan) with the same basic minimum benefits package offered at an affordable price - the gateway would be tasked with establishing procedures for certification of qualified plans and providing tools to help consumers obtain accurate information about premiums and other expenses ;
- premium assistance to individuals and families with incomes up to 500% of the federal poverty level to participate in the Gateway, but not for an employer’s plan;
- an increase in dependent care coverage to 26 years of age – extending coverage of parents’ health policies to allow high school and college graduates who are unable to find a job offering health care after graduation could potentially reduce the number of uninsured Americans by 7 million;
- a requirement that all full-time employees be offered the same level of benefit regardless of position – employers are currently permitted to offer different employees different benefit plans;
- a requirement that all employers either provide a certain percentage toward the cost of employee health coverage, with a pro-rata benefit for part-time employees who work less than 30 hours per week, or make payments to the HHS Secretary on a quarterly basis;
- a requirement that all plans report health care spending to HHS and provide rebates to plan participants for any profits over 20% of premiums; and
- expanded Medicaid eligibility to 150% of the federal poverty level.

On June 15, the Congressional Budget Office (CBO) released their [analysis](#) of the unfinished Kennedy bill and revealed that it will cost at least \$1 trillion over 10 years. They estimated that the plan will only insure an additional 16 million of the current 46 million uninsured Americans, leaving some 30 million still without health insurance. CBO also estimated that employer sponsored health care would decline by approximately 10%, or 15 million Americans, with a new insurance exchange – greatly



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weakening President Obama's continued promise that Americans who want to will be able to keep their current insurance and current doctors will be able to do so.

### *Finance Committee*

The Senate Finance Committee has been the most transparent of the House and Senate committees in its deliberations. Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) worked closely to produce three options papers this spring seeking input from stakeholders on [improving patient care and reducing health care costs](#), [providing affordable coverage to all Americans](#) and [proposed health system savings and revenue options](#). The committee is expected to release portions of their proposal by June 19 or early next week with a mark up slated for the week of July 6 at the latest. The Finance draft is still in the works but Baucus did reveal on June 16 that the committee is now considering including Sen. Kent Conrad's (D-ND) proposal to create non-profit health cooperatives in lieu of a public health insurance option as competitors to private insurers. His co-op proposal would allow states, small businesses, associations, and other organizations to band together and offer health insurance at lower costs. Baucus, who had previously said his bill will have a public insurance option, said, "the Conrad approach has got legs. It's quite viable." Finance Committee Republicans have been very outspoken in their opposition to a public option calling it a litmus test.

On June 16, CBO estimated that the Baucus bill would cost \$1.5 trillion over 10 years, though Baucus downplayed the score and said it was based on a 2-week-old draft of the bill. After receiving the CBO estimate, members of the committee held a late night closed-door meeting that resulted in Baucus postponing the committee mark up scheduled for June 23. Baucus' goal is to produce a bill that will cost less than \$1 trillion and be fully paid for and he said the committee needs more time to do so.

In addition to the cost, the mark up delay was likely caused in part by complaints from several members of the Senate Finance Committee about the short timetable set in which to considering such a large a health care overhaul. Sen. Olympia Snowe (R-ME), who Baucus is hoping will support his bill, spoke out publicly this week saying that process is "broken" and that for such a monumental issue the mark up was scheduled too soon after they expected to finalize the text of the bill. She also expressed concern that the proposals have become too costly saying, "we have a fundamental obligation to ensure this legislation does not increase the deficit and, sadly, current congressional health care reform efforts fall woefully short."



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### U.S. House

The House efforts have largely been run by Democrats from three House committees, Ways & Means, Energy & Commerce, and Education & Labor. The committees collectively released a “tri-committee” [general outline](#) of a bill last week, based on President Obama’s ideas, and are expected to unveil legislation in the next week, with hearings on the bill beginning next week followed by committee markups in early July, after the July 4 recess.

The House outline includes:

- a public health insurance plan as a one of the plan options, amid other private health insurance plans, in a health insurance exchange;
- insurance market reforms that would prohibit preexisting conditions exclusions, prohibit rating based on health status, gender, or occupation, and strictly limit premium variation based on age;
- premium assistance for individuals and families with incomes between Medicaid eligibility and 400 percent of the federal poverty level;
- a small business tax credit for firms providing health coverage;
- an individual mandate with an exception in cases of hardship;
- a pay-or-play mandate for employers that would require employers to provide benefits or contribute to a government kitty for healthcare, with an exemption for small low-wage firms; and
- a public/private advisory committee to make recommendations on benefit packages.

House Republicans have put together a Republican Health Care Solutions Group led by Rep. Roy Blunt (R-MO) to come up with an alternative to the Democrat bill. On June 17, they unveiled an [outline](#) of the bill they are drafting. According to the outline, a House Republican Alternative would raise the profile of health savings accounts, allow dependents to remain on a parents’ health insurance until they turn 25, temper medical liability lawsuits, provide financial assistance to low or moderate income families so they can purchase health insurance and extend tax benefits to individuals without employer-provided insurance.

### Business Response

Many employer groups have officially come out in opposition to the draft proposals or at least voiced significant concerns on certain provisions. Below is a listing of business associations who sent letters to the Senate HELP Committee in advance of the June 17



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mark up of the Kennedy proposal with a brief excerpt from their letter or summary of their concerns with the bill.

### *U.S. Chamber of Commerce*

“In the bill’s current configuration, the Chamber will oppose the ‘Affordable Health Choices Act,’ unless several key provisions are significantly changed...The Chamber strongly urges the Committee to forego inclusion of any language that would force a pay-or-play system on employers, create a new government-run insurance plan, or create an unelected, unaccountable bureaucracy that would force its decisions upon American workers and employers.”

### *Retail Industry Leaders Association*

“The legislation ... would usurp millions of working adults from employer-sponsored plans, establish a benefits board without proper oversight, and force employers to pay for health benefits in a gateway without oversight or input from those who would be paying for a large portion of it. For these reasons, we simply cannot support the bill as drafted.”

### *National Association of Wholesaler-Distributors*

“The National Association of Wholesaler-Distributors has come out in favor of comprehensive health care reform but says that an employer ‘pay or play’ mandate, a government option to compete with private health plans, taxing workers’ employer-paid health benefits, business tax hikes and ERISA (Employee Retirement Income Security Act) changes are deal breakers for the 40,000-employer-strong trade group.”

### *International Franchise Association*

“The IFA has strong concerns with some aspects of the draft, Affordable Health Choices Act of 2009.....The IFA strongly urges you to reject any proposal that creates a requirement to provide health coverage or pay new taxes to fund a public or government-run health plan in lieu of coverage. Every employer has limited resources to provide compensation and benefits for its employees. A federal mandate to provide health insurance—either so-called ‘pay-or-play’ or benchmarking to a percentage of payroll or revenue—would stretch the limited pool of resources past its breaking point. In order to comply, franchised businesses would have to scale back wages, reduce hiring and raise prices for services.”



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### *Corporate Health Care Coalition*

CHHC has concerns with containing the costs of the bill and that the bill will actually increase costs rather than decreasing them.

### *National Roofing Contractors Association*

“NRCA is concerned with an employer mandate, the government-run health plan option and the proposal of a minimum benefits package similar to the Federal Employee Health Benefits Program to make coverage less affordable and reduce choices for workers and businesses.”