REPUBLICAN VIEWS
H.R. 3200, the "AMERICA'S AFFORDABLE HEALTH CHOICES ACT OF 2009"

Introduction

Committee Republicans agree that health care reform legislation should make health care more affordable, improve quality, and reduce the number of uninsured Americans. As policymakers, we should be doing all that we can to make positive reforms to the health care system that would use private markets to lower the cost of health care insurance; improve affordability and accessibility for both employers and employees; give employers and employees the tools they need to encourage healthier behavior; change health care provider reimbursement structures to reward high-quality results; and address the long-term solvency of existing entitlement programs, like Medicare and Medicaid.

Considering that the majority of Americans obtain health insurance coverage through their employers, the employment-based system plays a central role in the delivery of health care. Recognizing the importance of employment-based health coverage, Committee Republicans have led efforts in recent years to lower the cost and increase the affordability of employment-based health coverage. Committee Republicans continue to support efforts to assist employers and employees in obtaining cost-effective, high quality coverage.

In assessing health care reform legislation, Committee Republicans bear in mind a number of important principles. Foremost, reform efforts should allow individuals who are satisfied with their current coverage to keep it, and give Americans the freedom to choose the health plans and medical providers that best fit their needs. Second, reforms should make quality health care coverage affordable and accessible for every American, regardless of pre-existing health conditions. Third, we must guard against a new government-run health care plan that would eliminate the health coverage that more than 100 million Americans currently receive through their job, or limit their choice of doctors and medical treatment options. Fourth, reform efforts must ensure that medical decisions are made by patients and doctors, not government bureaucrats. Finally, reforms must improve Americans' lives through effective prevention, wellness, and disease management programs, while developing new treatments and cures for life-threatening diseases.

Measured against these principles, H.R. 3200, as reported from the Committee on Education and Labor, wholly fails to meet the mark. For these reasons, and as set forth more fully below, Committee Republicans oppose the bill.

H.R. 3200, Procedural History

On the afternoon of Friday, June 19, 2009, House Democrats circulated the "Tri-Committee Draft Proposal for Health Care Reform," an 852-page health care plan crafted behind closed doors by the Democrat Chairmen of three House committees with jurisdiction over health care issues. The draft proposal was not formally introduced or assigned a legislative bill number. There were vast shortcomings and gaps in the draft proposal, including the lack of a cost estimate and the absence of several key provisions, including specific financing mechanisms.

House Republicans were denied the opportunity to provide meaningful input on the "draft proposal," and met for the first time with Committee Democrats only two days before the proposal was publicly circulated.

On Tuesday, June 23, 2009, the Committee on Education and Labor held a hearing on the draft proposal. Although Committee Republicans and invited witnesses provided valuable commentary, the short time frame for review and the significant gaps in the draft proposal hindered the ability to comprehensively analyze the Democrat health care reform plan prior to the hearing on June 23.

Thereafter, on July 14, 2009, House Democrat Leaders formally introduced their health care reform bill, H.R. 3200, the "America's Affordable Health Choices Act of 2009." The introduced bill totaled 1,017 pages (an increase of 165 pages) and contained numerous technical and substantive changes. No formal estimate of the cost of H.R. 3200 has been provided; rather, prior to the Committee's consideration of the bill a "preliminary," incomplete score of H.R. 3200 prepared by the Congressional Budget Office (CBO) was provided. This "preliminary" analysis was not based on H.R. 3200, but rather on "technical specifications" of the June 19 Tri-Committee draft proposal that were provided to CBO by House Democrats.

On the afternoon of July 15, 2009, the full Committee on Education and Labor commenced its markup of H.R. 3200 with Member opening statements. Late on that same afternoon, Committee Republicans were provided with the Chairman's Amendment in the Nature of a Substitute, which totaled 1,040 pages (adding another 23 pages) and contained further substantive changes to H.R. 3200. Not one hearing was held on the Democrat-generated health care reform provisions of H.R. 3200, or on the Chairman's Amendment in the Nature of a Substitute. On the morning of July 17, 2009, after consideration of 42 amendments, the Committee completed its consideration of H.R. 3200, and the bill was ordered favorably reported to the House of Representatives by a vote of 26-22. Three Democrats joined with all Committee Republicans in opposing the bill.

General Concerns Regarding H.R. 3200

Committee Republicans are concerned about the inexplicable rush to legislate on this important issue. The changes contemplated by H.R. 3200 will significantly impact more than one-sixth of the American economy, yet House Democrats drafted the partisan bill behind closed doors and without any meaningful participation by Republicans and even many Democrats. Committee Republicans have not been provided with an adequate amount of time to fully analyze the complex provisions of H.R. 3200. Further, we expect that the bill will change yet again following consideration by the three House Committees of jurisdiction, and prior to consideration by the full House, if it should occur. However, our review to date reveals numerous and significant policy concerns.

In general, Committee Republicans are concerned that H.R. 3200 fails to address the problems in the U.S. health care system, and in fact will only serve to exacerbate these problems through the adoption of misguided and historically ineffective policies. Moreover, the bill's true cost is unknown, but will likely be excessive. The cost will likely exceed $1.3 trillion over ten years, and the latest CBO estimate indicates that the bill will add more than $239 billion to the federal deficit over a ten-year period. More troubling is the fact that under H.R. 3200, the federal government starts collecting new taxes and revenues within a year or two of enactment, but implementation of many of the programs (i.e., the creation of a new federal bureaucracy and insurance coverage subsidies) is delayed, which artificially lowers the "cost" of the legislation under consideration by CBO. Further, in the later years of the CBO ten-year estimate, the costs of the program significantly outstrip new revenues, meaning the true costs of the Democrat legislation are much higher over the long term (i.e., beyond CBO's limited ten-year period). This is a cost the country cannot afford to bear.

The specific problems of the bill are numerous. For instance, Democrats attempt to pay for some of the cost through significantly higher taxes on individuals and businesses, with small business owners (those who create the majority of American jobs) appearing to shoulder a disproportionate share of the burden. It creates a massive new federal bureaucracy with unprecedented powers to determine "acceptable" health care coverage, and tax those who fail to comply with the bill's numerous legal mandates. The bill essentially eliminates current state-based private markets for health insurance. H.R. 3200 creates a "public health insurance option" (i.e., government-run health insurance plan) controlled by the new federal bureaucracy that is based on the flawed Medicare payment structure, and will undermine the private health insurance coverage currently enjoyed by millions of Americans. H.R. 3200 does little, if anything, to change the flawed health care delivery and payment structure, which is critical to control health care costs, increase affordability, and make coverage more accessible to Americans. The goal of H.R. 3200 appears to be nothing less than centralization of the country's health care sector in the federal government. It should be rejected.

Concerns Relating to ERISA Group Health Plans

The 1,040-page bill is divided into three separate Divisions: Division A, entitled "Affordable Health Care Choices"; Division B, "Medicare and Medicaid Improvements"; and Division C, "Public Health and Workforce Development". The Committee on Education and Labor maintains jurisdiction over much of Division A, and a portion of Division C. Considering this Committee's jurisdiction over the Employee Retirement Income and Security Act of 1974 (ERISA) and the provision of employer-sponsored group health coverage, this Committee's consideration of H.R. 3200 focused primarily on Division A.

Division A of H.R. 3200 contains several controversial Democrat proposals, including the establishment of a new federal bureaucracy which would be charged with defining "acceptable" health benefits, creating and regulating a new national health insurance exchange, distributing massive new federal subsidies for low and middle-income individuals to purchase "acceptable" health insurance through the exchange, and regulating the provision of insurance nationally. Also, Division A contains a provision creating a new government-run health insurance plan option, which would be a federally-created and administered government-run insurance plan based on Medicare, allegedly designed to "compete" with private insurance plans.

Democrats attempt to pay for this new bureaucracy through a number of new tax provisions that affect all Americans. For instance, H.R. 3200 institutes a new mandate on every individual to obtain "acceptable" coverage or pay a 2.5 percent tax. It creates a "pay or play" mandate on virtually all employers to provide "acceptable" insurance coverage or pay a new 8 percent payroll tax to the federal government. The introduced bill also provides some details left out of the June 19 Tri-Committee draft proposal, such as a provision exempting only the very smallest businesses, and new tax increases that are intended to pay for this massive new federal entitlement program. Many of the new taxes set forth in H.R. 3200 disproportionately impact small businesses and small business owners. Even so, Democrats' attempt to pay for the cost of this legislation falls far short as the bill's costs increase substantially over time and will likely result in at least a $239 billion increase in the federal deficit.[1] The overwhelming cost of the Democrat bill, and its bevy of new taxes, has raised significant concerns among many Americans. Committee Republicans believe that the bill creates a massive new federal bureaucracy and places significant new liabilities and tax burdens on all Americans and virtually all American employers, even those that are not profitable, which will likely have a negative impact on future economic growth.

Employer "Pay or Play" Mandate

Over 160 million people, or about 62 percent of the population under age 65, obtain health care insurance from their employers. Despite rising costs, this number has remained relatively consistent over the past decade, and most employees are happy with the coverage they receive from their employers. One of the primary reasons for the success of the employer-sponsored system is the ERISA-based regulatory structure that generally allows multi-state employers to voluntarily offer uniform health benefits to their employees, irrespective of location, by freeing the employer-sponsored plan from regulation by the states. Under the current ERISA structure, many employers gain administrative efficiencies and voluntarily design health plans tailored to the needs of their employees and families. This has permitted the private sector to develop innovative benefit designs and payment policies to control health care costs and improve quality.

As reported, H.R. 3200 imposes an unprecedented new tax on virtually all employers. Specifically, Title III, Subtitle B, "Employer Responsibility," mandates that all employers offer "acceptable" coverage under a "qualified health benefits plan" to each of their employees, or pay

[1] *See*, letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to the Honorable George Miller, Chairman, Committee on Education and Labor, dated July 17, 2009. The letter provides a preliminary analysis by the CBO and the Joint Committee on Taxation of H.R. 3200, as introduced on July 14, 2009, and does not reflect any modifications or amendments made after that date.

an 8 percent payroll tax to the federal government.[2] The "acceptable" coverage will be designed and determined by the new Health Benefits Advisory Committee and the Health Choices Commissioner. Section 312 provides that for full-time employees, employers have to contribute at least 72.5 percent of the applicable premium of the lowest cost plan for individuals, and 65 percent of the applicable premium of the lowest cost plan for family coverage. The mandate is also extended to part-time employees, but the bill fails to specify who is a part-time employee and leaves it to the federal government to define this term and create new employer contribution rules for such employees. In a provision only trial lawyers could like, the bill subjects ERISA group health plans to state court lawsuits. Finally, under Section 321, employers will be subjected to fines of up to $500,000 in the event they are found to be in noncompliance with the Act's onerous new mandates.

The new taxes on employers pose multiple problems, and have been the subject of much commentary from the representatives of those employers who will be directly impacted by the Democrats' new tax plan. For example, in a letter dated July 9, 2009 to Chairman Miller and Ranking Member Kline, Steve Pfister, the Senior Vice President of the National Retail Federation stated:

> Employer mandates of any kind amount to a tax on jobs. We can think of few more dangerous steps to take in the middle of a recession. We need to add new jobs, not exacerbate the near double-digit unemployment numbers. We cannot afford to have new and existing jobs priced out of our collective reach because of mandated health coverage.

In a July 15, 2009 general letter, Susan Eckerly, Senior Vice President of Public Policy for the National Federation of Independent Business (NFIB), stated that the NFIB, the nation's leading small business advocacy organization, opposed H.R. 3200 because of the inclusion of an employer mandate. Ms. Eckerly stated, in part:

> Research shows an employer mandate could cost 1.6 million jobs with more than 1 million of those jobs lost in the small business sector. The approach fails to increase affordability and, instead, devastates the economy – with the greatest impact being levied on the low-income community who will pay through depressed wages and lost jobs.... As if the mandate alone isn't destructive enough, the legislation uses perhaps the most egregious penalty of all – a

[2] The only exception to the mandate considered by the Committee was a sliding scale wage tax in Section 313, exempting only the very smallest employers with annual payrolls of less than $250,000, and limiting the payroll tax for companies with payroll of less than $400,000 annually. Under Section 313, employers with a payroll of less than $250,000 are not subject to any payroll tax. Companies with payrolls of $250,000 to less than $300,000 are subject to a 2 percent payroll tax; $300,000 to under $350,000 at 4 percent; and employers with payroll of $350,000 to less than $400,000 are taxed at 6 percent. Companies with payroll of more than $400,000 are taxed the full eight percent.

> payroll tax – as the penalty for those who cannot meet the obligations laid out in the bill. A payroll tax is particularly regressive because employers pay it regardless of whether or not their business is profitable.... The legislation even punishes employers who are currently providing insurance to their employees, but don't meet the premium contribution requirements in the bill (72.5% for individuals and 65% for family plans).

In a letter dated July 15, 2009 to Chairman Miller and Ranking Member Kline, R. Bruce Josten, Executive Vice President, Government Affairs for the United States Chamber of Commerce, expressed opposition to the employer mandate. Mr. Josten stated:

> the bill contains a job-killing employer mandate and accompanying 8 percent payroll tax. Attempts to carve out some small businesses will not prevent the adverse economic consequences of this provision.

The Majority claims that H.R. 3200 will save money and create new jobs. These assertions ignore the analysis of CBO which indicates that the pending legislation adds at least $239 billion to the federal deficit over ten years, with that number likely to grow substantially in the following decade. Further, CBO has not found that H.R. 3200 controls or reduces underlying systemic health care costs, which is essential to making care and coverage more affordable. Finally, as reflected in the comments above, the new taxes on all employers will slow economic growth and stunt new job creation, particularly among those employers who struggle to reach or maintain profitability.

Finally, some Committee and House Democrats have expressed serious reservations regarding the onerous requirements on employers. For example, in a letter dated July 9, 2009 from the fiscally conservative Blue Dog Coalition to Speaker Nancy Pelosi and Majority Leader Steny Hoyer, forty "Blue Dog" Democrats stated that "any additional requirements for employers must be carefully considered and done so within the context of what is currently offered. Small business owners and their employees lack coverage because of high and unstable costs – not because of an unwillingness to provide or purchase it. We cannot support a bill that further exacerbates the challenges faced by small businesses."[3]

Committee Republicans believe that the employer "pay or play" mandate is simply flawed policy that will destroy the voluntary, employer-sponsored ERISA health benefits

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3 *See*, letter from "Democratic Blue Dog Coalition" to The Honorable Nancy Pelosi, Speaker, and The Honorable Steny Hoyer, Majority Leader, dated July 9, 2009. The letter, signed by forty Democrat Members of Congress, stated their belief that the tri-committee health care reform proposal "lacks a number of elements essential to preserving what works and fixing what is broken" in the health care system, and that legislation must include provisions to ensure deficit neutrality, delivery system reform, small business protections, rural health equity, and bipartisanship.

structure, limit future flexibility to design affordable health plans, increase costs and cause significant job losses, and depress wage growth, especially for low-income Americans. This mandate would be especially hard on smaller or mid-sized firms that may not be eligible for an exemption, and who may struggle to reach and maintain profitability. Further, the proposed tax penalty percentage (eight percent for most employers) could increase in the future at the whim of Congress, especially if the federal government needs additional revenues to cover shortfalls in this massive new entitlement program, potentially increasing the burdens on employers.

In addition, numerous structural components of the proposed mandate are problematic for employers and the current ERISA structure. In the fifth year of the exchange, employers whose workers choose coverage through an exchange will be forced to pay the eight percent tax to finance their workers' exchange policy, even if they provide coverage to their employees. This will certainly place increasing pressure on employer group health plans in the form of adverse risk selection, since employees could leave the group health plan for the exchange and shrink the size of the group plan's pool of participants. Many employers may simply choose to drop coverage and pay the tax, rather than administer and pay for an increasingly inefficient group health plan.

Further, under the Democrat bill, there is no way of knowing whether the coverage currently enjoyed by tens of millions of employees and their families, including health savings accounts used in conjunction with high deductible health plans (HSA/HDHP), will meet the future "acceptable" benefit and employer contribution requirements. For example, a HSA/HDHP individual plan with an actuarial value of 69 percent will not meet the requirements of this bill. Employers would have to change this benefit to comply with the new mandates, or the individual employee could face the individual tax for non-compliance.[4] Also, employers who contribute less than the statutory amounts (72.5 percent and 65 percent for individual and family coverage, respectively) will have to change or be subjected to a new tax. This could cause some employers to drop coverage altogether.

Clearly, the employer "pay or play" provisions are designed to make it more difficult for employers to offer ERISA-based group health plan coverage, and direct more employees and their families to the new federal health insurance exchange and its government plan, Medicare-based, option. Contrary to Democrat political rhetoric, there is a substantial likelihood that employees who like their current coverage will not be able to keep it.

For these reasons, Committee Republicans object to the employer "pay or play" mandate in H.R. 3200.

Impact on ERISA Preemption and Remedies

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[4] *See*, H.R. 3200, Sections 301,401, July 14, 2009, regarding the new tax on individuals who fail to obtain acceptable insurance coverage.

Under current law, the ERISA regulatory structure preempts employers and group health plans from liability under state law. This has resulted in significant administrative savings and contributes to the ability of employers and group health plans to offer high quality, affordable health insurance coverage to more than 130 million Americans.

The Tri-Committee bill raises serious questions and concerns regarding the continued viability of the current ERISA regulatory structure, and whether H.R. 3200 exposes employers and group health plans to new liabilities for claim decisions. Under current law, group health plans are required to comply with the requirements of ERISA, and any disputes are governed and resolved under its provisions. This ensures that employers, who may provide health insurance coverage for workers in all 50 states, must comply with the federal law only, which permits the delivery of uniform benefits and saves administrative costs. They cannot be sued in state courts, under different laws.

The bill appears to change this by creating two different penalty regimes inside the new insurance exchanges; for group health plans and their beneficiaries, there would be varied and unlimited penalties set forth under 50 different state laws. To the extent that group health plans are permitted to purchase through the insurance exchanges, they will be subjected to potentially expansive new state court liabilities.

At the same time that they are subjecting private plans to a patchwork of state laws, Democrats chose to apply a uniform federal scheme similar to Medicare to the government-run health insurance plan. This would provide an unfair financial advantage to the government-run health plan since, unlike ERISA group health plans, the government-run plan would not have to face lawsuits and comply with up to 50 different sets of state laws.

Two groups appear to benefit from this proposed structure: trial lawyers and the government bureaucrats running the government-run health plan. Further, ERISA group health plans would face significant new liabilities and costs which would likely cause them to drop coverage altogether, accelerating the movement from private, employer-sponsored health insurance to a government-run plan.

For these reasons, Committee Republicans object to new liabilities imposed on ERISA employers and group health plans in H.R. 3200.

<u>The New Federal Bureaucracy and the Government-Run Health Plan</u>

Committee Republicans are concerned that H.R. 3200 creates a massive new federal health insurance bureaucracy, the "Health Choices Administration," that would create a "one-size-fits-all" standard for health coverage and vest unprecedented control with one individual, the new "Health Choices Commissioner." This new Commissioner would be charged with governing the national exchange, enforcing insurance plan standards, distributing taxpayer subsidies, and fining non-compliant individuals, plans and employers. This structure would restrict the sale of insurance outside of the exchange, and ultimately would eviscerate private insurance markets over time.

Under H.R. 3200, the Department of Health and Human Services (HHS) will be charged with creating a public health insurance option that would only be available in a national health insurance exchange. Although the plan would have to comply with requirements on private, exchange-available plans, the exchange would have no power under the bill to reject, sanction or terminate the government option run by HHS. Further, the government plan would be subject to lawsuit only in federal courts; this differs substantially from private plans, including employer-sponsored group health plans currently regulated under the federal ERISA law, which would be subject to state court lawsuits (raising the costs for private plans).

With respect to government-plan funding, "start-up" funds in the amount of $2 billion in taxpayer money would be provided from the Treasury. Although the plan's premium rates would be required to cover the cost of the benefits and administration, going forward there is no requirement that the government plan maintain a certain "reserve" level, similar to those required of state-based private insurance companies. This could give the government plan a potentially significant competitive advantage over private insurers.

Importantly, the government plan would be based on the failed Medicare payment structure. Specifically, the plan would pay Medicare rates for at least the first three years, with Medicare-participating physicians getting a five percent bonus for the first three years. The problems with this structure are numerous. First, Medicare pays on a fee-for-service basis, which rewards those providers that increase the volume of medical services, as opposed to those providers that limit utilization and provide high quality care. The Medicare reimbursement structure is historically inflexible when it comes to designing and implementing more innovative policies and reimbursement structures. Private innovations, like paying for health care provider performance, and the adoption of prevention and wellness programs, are exceedingly difficult to duplicate in the Medicare structure given that it is a government-administered program which is highly resistant to change.

Second, government health entitlement programs, like Medicare and Medicaid, routinely underpay health care providers, resulting in a cost-shift to private plans and private payers. This was confirmed in the testimony of a New Jersey hospital executive at a hearing before the Subcommittee on Health, Education, Labor and Pensions in March 2009. Reliance on existing Medicare payment rates, with minor adjustments, will, according to an estimate by The Lewin Group, an independent consulting company, significantly underpay health care providers, compensating them at rates 20-30 percent below what private plans pay for the same services. Even if adjustments are made to lower the underpayment rates, by design, the government-run plan will underpay providers to reduce premium costs, in order to increase enrollment and crowd-out private insurers. This inherent cost advantage built into the government plan created by H.R. 3200 will result in a government plan with artificially low premiums, which will likely have a negative impact on health care quality.

These concerns were expressed in a letter from 13 health care providers and associations, including the Mayo Clinic, in a letter dated July 16, 2009 to Representative Ron Kind (D-WI). Specifically, these groups expressed concern that:

> ...a public plan option with rates based on Medicare rates will have a severe negative impact on our facilities. Today, many providers suffer great financial losses associated with treating Medicare patients. For example, several of the systems that have signed onto this letter lost hundreds of millions of dollars under Medicare last year. These rates are making it increasingly difficult for us to continue to treat Medicare patients. The implementation of a public plan with similar rates will create a financial result that will be unsustainable for even the nation's most efficient, high quality providers, eventually driving them out of the market. In addition, should a public plan with inadequate rates be enacted, we will be forced to shift additional costs to private payers, which will ultimately lead to increased costs for employers who maintain insurance for their employees. We believe all Americans must have guaranteed portable health insurance, but it is critical that we not lose sight of the need to ensure adequate and equitable reimbursement.

The results of a government-run health insurance plan are undeniable. Although Democrats argue the purpose of the government plan is to increase competition, it will have the exact opposite effect. Considering that the government plan will possess certain advantages (discussed above) it will not, by design, compete fairly with private insurance and group health plans. Studies of the effect of a government plan option indicate that there will be movement from private insurance coverage to a government-run plan which would concentrate control of health care with the government, which already controls almost half of the country's health care spending. For example, CBO analyses provided to the Committee on July 14 and July 17 indicate movement of individuals from private coverage to the government plan. In a June 2009 study, the Lewin Group found that a government plan open to all, and based on Medicare-level reimbursement rates, would result in almost 114 million Americans losing their current private insurance coverage because of movement toward an artificially cheaper, benefit-rich government plan.[5] Simply put, the availability of a government plan will create a cycle of increasing costs for those with private plans, forcing employers to drop coverage and pushing more workers into the government plan.

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[5] *See, The Impact of the House Health Reform Legislation on Coverage and Provider Incomes*, Testimony of John Sheils, Vice President, The Lewin Group, before the Energy and Commerce Committee, U.S. House of Representatives, June 25, 2009. http://www.lewin.com/content/publications/June25TestimonyUpdateJul09.pdf.

The new federal health care bureaucracy, with its myriad rules for private plans and government-run insurance option, will ultimately decrease the competitiveness of private insurance and group health plans, essentially resulting in a government takeover of the health care system. The government's track record on health care is not one to be duplicated; the Medicaid program does not pay for the full cost of medical care, is routinely underfunded, and places a substantial burden on states. The Democrat answer in H.R. 3200 is to increase Medicaid eligibility to 133 percent of the federal poverty level, which would exacerbate health care provider underpayments, create a new entitlement mentality, and substantially increase the federal government's Medicaid payments in perpetuity. Medicare underpays health care providers, is an outdated and inflexible benefit design, and has unfunded obligations totaling $37.8 trillion. The House Democrat answer is not to first fix Medicare but to create a new federal entitlement program for those under 65 based on Medicare, spend more than $1.3 trillion, and raise taxes on Americans. These policies do nothing to control existing health care costs, and only serve to worsen the nation's long-term fiscal outlook while removing decisions from the hands of doctors and patients and placing them in the hands of Washington bureaucrats.

Clearly, if Americans like their current coverage and the quality of their health care, it will be in jeopardy under the Democrats' plan as set forth in H.R. 3200.

Republican Alternative

Committee Republicans agree that the health care system is in dire need of reform and stand ready to work with Committee Democrats to forge a truly bipartisan compromise. However, Committee Republicans believe the policies contained in H.R. 3200, which seek to expand health care insurance coverage at great cost without first addressing and controlling underlying health care costs and provider shortages, are doomed to fail.

Republicans agree with Democrats that the problem of the uninsured must be addressed. The Majority notes that 47 million individuals are uninsured; however, this population is not homogenous. According to a report released by the Congressional Research Service on September 14, 2009, approximately 20 percent of the uninsured are non-citizens. Further, approximately 10 million more individuals may already be eligible for existing government insurance programs, but are not enrolled, and many millions more are young or voluntarily choose to go without coverage. Rather than creating a massive new federal entitlement program, Republicans believe underlying costs must be addressed in order to make coverage more affordable and accessible, with implementation of targeted approaches to address the specific characteristics of the uninsured population.

The first step to lower health care costs is to address overspending in the current system.[6] To lower costs, Committee Republicans would consider: changes to the tax code to permit

[6] In testimony before the Senate Health, Education, Labor and Pensions Committee on July 16, 2009, CBO Director Douglas Elmendorf stated that all of the Democrat proposals reviewed to date, including H.R. 3200, do little, if anything, to control health care costs.

individuals to share some of the same advantages as those with employer-sponsored coverage; promote incentives to save for future health care costs; promote meaningful medical liability reforms to reduce costly and unnecessary defensive medicine practices; provide existing government programs with additional authority and resources to stop fraud and abuse; and permit small business to band together to offer health insurance at lower costs.

Republicans and Democrats agree that small businesses face unique and difficult challenges in securing affordable health insurance coverage. Yet the Democrat response to this challenge is to construct an elaborate new federal bureaucracy and entitlement program, with the imposition of massive new taxes, administrative requirements and penalties on all but the very smallest employers, Republicans have tirelessly advocated for targeted, less costly measures to address the specific problems confronting small businesses – small business, or association, health plans constitutes one such measure that can be enacted immediately and would permit small businesses to band together to pool their purchasing power and enjoy the same benefits as larger employers.

Additionally, Committee Republicans support policies that would provide employers with greater flexibility to promote prevention and wellness programs, and financially reward employees who seek to achieve or maintain a healthy weight, quit smoking, and better manage chronic diseases like diabetes. Changing payment structures to reward high quality care, rather than volume of medical services, and increasing care coordination, can also help control health care costs. Further, before creating another federal entitlement program and adding to the federal deficit, Committee Republicans believe it is necessary to address the long-term fiscal solvency of existing federal entitlement programs.

Committee Republicans would also seek to expand access by strengthening employer-sponsored coverage to millions of people who are already eligible, encourage states to create or modify programs to guarantee all Americans have access to affordable coverage regardless of pre-existing medical conditions, promote policies to increase portability of coverage regardless of employment status, and help employers offer coverage by reducing administrative costs through a small business tax credit.

In short, Committee Republicans support policies that promote individual behavior and responsibility for health care and coverage decisions, and maintain the doctor-patient relationship, while keeping the federal government out of the business of dictating health care coverage requirements or favoring a government-insurance model over private coverage. Committee Republicans remain willing to work with Democrats in developing a compromise bipartisan health care reform bill.

Republican Amendments

Committee Republicans offered twenty-six amendments during the Committee's consideration of H.R. 3200 on July 16 and 17. Republican amendments attempted to highlight significant concerns with H.R. 3200 and improve some of the more troubling provisions of the bill. In general, Committee Republicans offered solutions to the health care crisis, and expressed significant concerns regarding: the significant cost of H.R. 3200; the adverse impact on the economy, workers, families and small businesses; the government takeover of the health care system; the fact that under H.R. 3200 those who like their coverage won't be able to keep it; preservation of the doctor-patient relationship; and opposition to likely rationing of medical care under the Democrat proposal.

Specifically, Committee Republicans offered amendments intended to:

- Strike provisions creating the new "Health Choices Administration;"
- Strike provisions creating the national health insurance exchange;
- Strike the employer "pay or play" mandate;
- Strike the government-run insurance plan;
- Ensure that the coverage provided by ERISA group health plans, now and in the future, would be preserved under the plan;
- Ensure deficit neutrality;
- Suspend the bill where the national unemployment rate exceeded 8% in two consecutive months;
- Preserve the protective remedies of ERISA for ERISA-governed plans;
- Prevent mandated coverage of abortion services;
- Prohibit federal funding for abortion services under the bill;
- Prohibit any tax increase on American families with annual incomes under $250,000;
- Provide employers and employees with greater flexibility to promote prevention and wellness programs, which are proven to increase personal responsibility and lower health care costs[7];
- Permit consumer-directed health plans to remain viable options[8]; and
- Permit small businesses to pool together to purchase health insurance through Association Health Plans.

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[7] Specifically, Republicans offered an amendment to permit employers to vary employees' health insurance premiums by up to 50 percent to encourage participation in health promotion and disease prevention programs. Current law already permits variations up to 20 percent. Employer-based prevention and wellness programs have a proven-track record of improving employee health and lowering health care expenses and insurance coverage premiums. *See,* Paul Speranza, Jr., Testimony before the Committee on Education and Labor, "The Tri-Committee Draft for Health Care Reform" (June 23, 2009) at 3-4. This amendment was voluntarily withdrawn in the hope that the Majority would work with Republicans to adopt this common-sense provision; Republicans continue to urge that this provision be included in any reform legislation.

[8] During this Committee's consideration of H.R. 3200, Republicans introduced an amendment to permanently grandfather consumer-directed health plans and arrangements, so that millions of individuals could continue to save for future health care needs and benefit from this coverage. The Majority rejected this amendment, which highlights the fact that if you like your current coverage, you will not be able to keep it under H.R. 3200.

Each of these amendments was rejected, by and large on a party-line basis.

Although some amendments were adopted in an attempt to improve the legislation,[9] many attempts to amend and improve a flawed bill were rejected. Committee Republicans are concerned that the bill remains fundamentally flawed; nevertheless, Committee Republicans continue to stand ready to work with Committee Democrats to draft and enact bipartisan health care reform legislation.

Conclusion

Committee Republicans support the voluntary, private health care system and meaningful reforms to that structure, while opposing measures that would serve to increase federal government control over the health care system. Committee Republicans are also committed to ensuring that the costs of health care reform efforts do not add to the federal deficit or result in higher taxes, which will have the effect of restricting American economic growth. The goal of controlling health care spending is not accomplished by adding more than $1.3 trillion in new spending to America's health care bill. While perhaps well-intentioned, H.R. 3200 is not an acceptable health care reform bill. For all of the foregoing reasons, we respectfully oppose enactment of H.R. 3200 as reported from the Committee on Education and Labor.

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[9] A limited number of amendments were adopted. For example, the Committee accepted language to exclude TRICARE (the Department of Defense's civilian healthcare program for active and retired military personnel) from the provisions of the bill; to express the sense of Congress that Members who vote for the bill enroll in the new government-run plan; to ensure non-discrimination for spiritual care; and to maintain the private right to contract for medical services.

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MICHAEL N. CASTLE

MARK E. SOUDER

VERNON J. EHLERS

JUDY BIGGERT

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JOE WILSON

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BRETT GUTHRIE

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