

## **ObamaCare Legislative Summary America's Affordable Health Choices Act of 2009 – H.R. 3200**

### **Introduction**

It is likely that you have turned on the news, opened a periodical or visited a news website recently and encountered stories relating to the health care reform being actively pushed by President Barack Obama. The actual proposed bill is titled “America’s Affordable Health Choices Act of 2009” (“H.R. 3200”). These stories include emotional town hall meetings, Congressmen proclaiming the bill will help Americans, Congressmen proclaiming the bill will destroy American lives, and Americans trying to understand the bill. But what many of these stories fail to achieve is to provide a clear picture of what H.R. 3200 actually does.

This summary strives to provide an educational background of the status and content of the proposed legislation. Regardless of the reader’s political affiliation or current view of the bill, it is clear that legislation of this magnitude (if passed) will dramatically impact the way we as patients receive healthcare and the way physicians provide care to their patients. Additionally, it will dramatically impact businesses through all sectors, including physician practices. The only message to the readers of this article is to become educated and become involved in this dramatic proposed reform.

In providing context for this summary, there are basic principals that must be understood. First, H.R. 3200 is only one part of the complicated political process for enacting a health care reform bill. H.R. 3200 is designated for the House of Representatives (“House”); the Senate is drafting its own bill that may or may not mirror H.R. 3200. Second, H.R. 3200 is simply a proposal. It is likely that any final bill passed and signed into law will be different than the current draft of H.R. 3200. Consequently, this summary will focus on the general concepts that H.R. 3200 attempts to accomplish.

### **Summary**

- The health care reform bill is a proposal and no provisions are guaranteed to be included in the final law; however, all provisions have a possibility of being included.
- Most substantial actions relating to the bill will likely occur after Labor Day.
- The House Bill is currently with the House Rules Committee, who will be preparing a final bill to be voted on by the House.
- The Senate Bill is currently awaiting a bill version from the Senate Finance Committee to be combined with the approved version from the Senate Health, Education, Labor and Pensions Committee.
- All references contained in this summary are current as of August 19, 2009 and are subject to change.

## **Status of the Bill**

When H.R. 3200 was introduced into the House, it was distributed to three different committees: 1) Education and Labor; 2) Ways and Means; and 3) Energy and Commerce. All three committees took time to review, change, cut, add and amend H.R. 3200 (this is known as “markups”). The last committee completed their markups at the end of July. The result is that an already voluminous bill is even more voluminous with the additions of hundreds of amendments. The three marked up versions of H.R. 3200 have been given to the House Rules Committee to prepare a finalized version of the bill to be voted on by the House. This will not happen until after Labor Day due to Congress’s August vacation. A copy of H.R. 3200 as originally drafted can be found here:

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3200ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3200ih.txt.pdf)

While the House attempts to finalize their version of the bill, the Senate is further behind. Two committees within the Senate are tasked with drafting a version of the bill: 1) Health, Education, Labor and Pensions (“HELP”); and 2) Finance Committee (“FC”). HELP completed and approved their version in mid-July; however, as of August 19, 2009, the FC has not approved a version due to its goal of drafting a bipartisan bill. A copy of the HELP bill can be found here:

[http://help.senate.gov/BAI09A84\\_xml.pdf](http://help.senate.gov/BAI09A84_xml.pdf)

The FC will attempt approve a version sometime after Labor Day, but before a loosely imposed deadline of September 15.

## **H.R. 3200 Provisions**

Much of the confusion regarding the contents of H.R. 3200 can be attributed to the procedural requirements discussed above in making the bill into law. With the work of five committees in two different Congressional chambers, general references to the bill may not present the clearest picture of what the reform will achieve. When discussing a specific issue, it is critical that references be made to a committee version, if possible. For example, there has been discussion that H.R. 3200 will impose a tax on plastic surgery that is not medically necessary. The reality is that this concept is not included in H.R. 3200; however, the Senate FC is rumored to be considering this option for their version of the bill as a way to fund the reform. Because the FC has not finalized their version of the bill nor have they released a version for reviewing, it would be premature to assume there will be such a tax. On the other hand, it is important to continue following the discussion because the tax could potentially be a part of the finalized version.

## **Summary**

With all this in mind, the below summary is an overview of what H.R. 3200 intends to accomplish and highlights those possible differences known from the Senate bills. For the purpose of this summary, we will not comment as to if these sections actually accomplish the intent of the bill. Rather, we will hold off on making these comments until the Senate and House

bill is in a more complete form. The goal of H.R. 3200 is to “provide affordable, quality healthcare for all Americans and reduce the growth in health care spending.” The bill focuses on three different areas: the health insurance industry, employers, and individuals.

- 1) Health Insurance Impact
  - a) Prohibition on imposing pre-existing condition exclusions.
  - b) Defined standard benefits package (minimum services to be covered).
  - c) Establishment of a Health Insurance Exchange facilitating insurance purchasing for uninsured and small businesses.
    - i) A collection of contracted entities that will offer a variety of plans with differing benefit levels.
    - ii) All premiums are paid directly to the plans.
  - d) Creation of a Public Plan<sup>1</sup>
    - i) Made available through the Health Insurance Exchange.
      - (1) Essentially another insurance plan option for the uninsured and small employers (i.e. not required).
    - ii) Payment rates to doctors and other providers.
      - (1) First 3 years = Medicare Rates
        - (a) Incentive to practitioners that participate in both Medicare and the Public Plan.
      - (2) After 3 years = Secretary of Health and Human Services determines rates
    - iii) Doctors and other health care providers participating under Medicare are participating providers in the Public Plan unless they opt in a process to be established.
- 2) Employer Impact
  - a) Employer must offer employees qualified health coverage and contribute to that coverage.
    - i) Penalty (“contribution in lieu of” payment) for employee declining offer and obtaining coverage through Health Insurance Exchange.
    - ii) Certain small employers are exempt.
- 3) Individual Impact
  - a) All individuals are required to have health insurance or incur a tax penalty.
  - b) Individual Subsidies
    - i) Individuals and families may be able to use “affordability credits” to purchase coverage through the Health Insurance Exchange.
    - ii) Subsidies and cost-sharing amounts determined based on income sliding scale.

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<sup>1</sup> The Public Option was the foundation of President Obama’s Health Care Reform Plan. However, in attempting to draft the non-partisan bill, the Senate FC has been moving towards a Co-op Plan. The Co-op plan involves nonprofit cooperatives selling insurance in competition with the private companies. Recently, President Obama declared the possible acceptance of a Co-op plan in lieu of the Public Option. This is just another example of how everything can change between H.R. 3200 and the final bill.

- 4) Funding the Health Care Reform<sup>2</sup>
  - a) Surtax from 1%-5.4% on income \$350,000 or greater for joint returns (individual returns = \$280,000).

### **Conclusion**

As you can see from the above discussion, there is still a long process to complete before a final health reform bill is enacted. Due to the Congressional recess, August will see Congressmen holding town hall meetings and television ads running discussing the pros and cons of the health reform bill. Things may change on a daily basis. Caution should be used when evaluating the accuracy of any claims being made. Understanding the political process will assist in the assessment of what is being said. If you have any questions or concerns and want to contact a Congressional Representative you can visit:

[http://www.congress.org/congressorg/directory/congdir.tt?action=myreps\\_form](http://www.congress.org/congressorg/directory/congdir.tt?action=myreps_form)

At a minimum, it is critical for all of us to simply stay informed as to what is being done in both the House and the Senate and monitor the final bill versions to assess the effect of the reform.

For more information, contact Michael S. Byrd (mbyrd@settlepou.com) or Bradford E. Adatto (badatto@settlepou.com) of SettlePou at (214) 520-3300.

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<sup>2</sup> There are several rumors of what is being contemplated by the Senate FC bill to finance the reform. These include taxes on insurance companies, millionaires, and/or plastic surgery (10% excise tax).