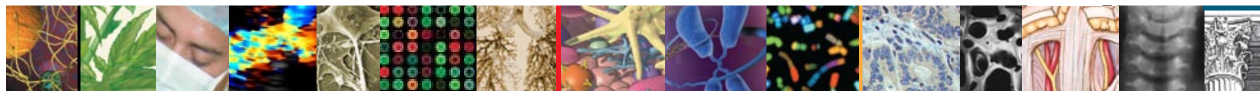

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HEALTH CARE 2009

The Struggle for Reform — Challenges and Hopes for Comprehensive Health Care Legislation

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Undaunted by a soaring federal deficit, competing legislative priorities, and skeptical Republicans, leading Democrats are relentlessly pursuing health care reform, as they hold hearings, engage key stakeholders, plot strategy, and draft legislation. Five congressional committees — two in the Senate and three in the House — are at work on major reform legislation. While underscoring his administration's strong support for reform, President Barack Obama has emphasized his preference that Congress lead in crafting a measure aimed at expanding coverage, improving care delivery, and constraining the growth of health care spending.

None of the committee chairs have introduced reform bills yet, but all have set ambitious timetables that would place an enacted measure on Obama's desk before the end of the year. The three House committees, each with jurisdiction over some portion of the health care system and chaired by a liberal Democrat, are Education and Labor, chaired by George Miller of California; Energy and Commerce, chaired by Henry Waxman of California; and Ways and Means, chaired by Charles Rangel of New York. The two Senate panels are the Finance Committee, chaired by moderate Democrat Max Baucus of Montana, and the Health, Education, Labor, and Pensions Committee, chaired by the more liberal Edward Kennedy of Massachusetts.

Though the devil is in the details, the outlines of a proposal that could attract the support of a sizable majority of Democrats are emerging. Although each panel focuses on the issues within its jurisdiction, there is a strong sentiment among Democrats that the prospects of enacting a reform bill would increase if they could agree on an approach. The three House chairs underscored this goal in a March 11 letter to Obama, pledging to "bring similar legislation before our committees and to work from a harmonized approach to ensure success."

The consensus emerging from the two Senate committees — whose chairs plan to bring out two separate measures but then meld them on the Senate floor — echoes key elements of the reforms adopted by Massachusetts, including a requirement that all residents purchase health insurance, with premium subsidies for people of modest means, and the creation of an insurance exchange through which uninsured adults could purchase affordable coverage. (Under the envisioned national system, eligible adults would select from federally approved private health plans offering about

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three different standardized benefit packages.) Other key features would include the expansion of Medicaid for adults in the 33 states with an eligibility cutoff of 100% of the federal poverty level and, through the Children's Health Insurance Program, for children in families with incomes below 250% of the federal poverty level.

Additional proposals favored by Democrats and many Republicans include reforming the delivery system through the "bundling" of payments, the development and rewarding of "accountable care organizations,"[1] and the inclusion of financial incentives designed to increase the attractiveness of careers in primary care, including the promotion of the medical-home model. Whether legislators would favor primary care by reducing Medicare fees for specialists is an open — and controversial — question that would divide the medical profession and perhaps jeopardize reform.

Last November, Senator Baucus cited these proposals and others in describing his vision of reform.[2] Because he is generally careful not to stray too far from the conservative views of many of his Montana constituents, Baucus's passionate pursuit of health care reform has surprised some people. At a recent briefing, he said, "This is the most difficult legislative challenge of my life, and I relish it." Baucus has expressed a willingness to cap the tax-free amount of employer-provided health benefits, whose deductibility currently costs the federal treasury about $250 billion a year in forgone tax revenue. (The administration has signaled a willingness to accept such a measure even though during the presidential campaign Obama denounced a similar proposal as "the largest middle-class tax increase in history."[3]) Baucus also proposed accelerating the pursuit of fraud, waste, and abuse in public programs; increasing the transparency of physician–industry relationships and physicians' self-referral of patients; and addressing professional-liability issues.

Baucus's most controversial proposal — which is supported by the four other committee chairs — calls for the creation of a public insurance plan that would compete against private insurers. This contentious issue divides Democrats, who wish to enlarge government's role in health care, from Republicans, who favor more market-based solutions. Most Republicans on the Senate Finance Committee, including its ranking member, Senator Charles Grassley of Iowa, and senior Senators Orrin Hatch of Utah and Michael Enzi of Wyoming (both of whom also serve on Kennedy's health panel), are strongly opposed. Grassley has said that the creation of a public plan "is a deal breaker for Republicans if it's in, and it's a deal breaker for Democrat if it's not. Is there a compromise in between? I don't see one today."

Without the Finance Committee's backing, the likelihood of including a new public plan in a reform package is greatly diminished. Moreover, the public-plan option has also divided the parties at hearings of the House Committee on Energy and Commerce and the House Ways and Means Committee. Should Democrats acquiesce to moving forward without the public plan, they will certainly demand tighter regulation of the private insurance market, with assurances that commercial carriers would be required to offer standardized and affordable benefits to all comers.

In an effort to dampen support for a new public plan, the two largest insurance trade groups, America's Health Insurance Plans and the Blue Cross and Blue Shield Association, sent letters to Senate leaders on March 24, saying that if Congress enacted an enforceable requirement for everyone to carry health insurance, "we could guarantee issue of coverage with no preexisting condition exclusions and phase out the practice of varying premiums based on health status in the individual market." But the heads of the trade groups said insurers wanted to retain the right to charge different premiums based on the age, place of residence, and family size of subscribers.

Senator Kennedy has been under treatment for brain cancer and away from Washington a fair amount, but his condition has added a sense of urgency to discussions about health care reform that have been going on since September between his staff and a range of private interests. Among the participants have been representatives of AARP, the American Cancer Society, the American Medical Association, America's Health Insurance Plans, the Business Roundtable, the National Federation of Independent Business, the Pharmaceutical Research and Manufacturers of America, and the United States Chamber of Commerce. The involvement of multiple representatives of employers underscores Kennedy's belief that business must be a strong advocate of reform in order to ensure enactment.

In a recent memorandum, David Bowen, who directs Kennedy's health staff, summarized the closed-door discussions about proposals that, like Baucus's vision, resemble key elements of the Massachusetts reform. Bowen wrote:

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"The sense of the room is that an individual obligation to purchase insurance should be part of reform if that obligation is coupled with effective mechanisms to make coverage meaningful and affordable. . . . There seems to be a sense of the room that some form of tax penalty is an effective means to enforce such an obligation, though only on those for whom affordable coverage is available." Creation of a public insurance plan has sparked controversy in these discussions, with some participants arguing that certain functions "could only be met by having a public program option," and others that reform of private markets would be sufficient and preferable.

There has been "strong agreement that measures to improve efficiency and reduce health care costs are essential," wrote Bowen, who then listed 38 possible measures. But when any of the committees actually drafts provisions for reducing the growth of expenditures or raising revenues to pay for reform, the ensuing controversies may be as intense as the fight over the creation of a public insurance plan. (Massachusetts offers no lessons here, because it sidestepped serious cost containment in 2006 and is just trying to grapple with it now.) One of the revenue-raising options being discussed by Kennedy's staff is increasing taxes on sugar-sweetened soft drinks, the heavy consumption of which is a leading cause of obesity. The staff has discussed a tax of about 5 cents per 12 oz of soda, which would raise an estimated $8 billion a year. Other, less politically promising revenue sources would be increased taxes on alcohol and tobacco.

Whatever options the committees end up favoring, they will rely heavily on recommendations of the Congressional Budget Office (CBO)[4] and the Medicare Payment Advisory Commission.[5] Last December, the CBO outlined 115 options that would alter federal programs, affect the private health insurance market, or both. Many of these options would reduce the federal budget deficit, and many could also slow the growth of private health care expenditures. The options span the medical economy and include ways of slowing Medicare spending by physicians and hospitals.

Whereas Democrats have a sizable majority in the House, their margin in the Senate is only 58 to 41, with one race still undecided. Adding to the tension over the issues is an expressed willingness of Democratic leaders to wield a parliamentary procedure known as "reconciliation" to enact a health care reform measure. Through reconciliation, a bill can pass the Senate with 51 votes rather than the 60 necessary to overcome a possible filibuster. Using reconciliation to enact a major bill would be unusual but not unprecedented: the procedure has been used to secure other major initiatives, from Bill Clinton's tax increases in 1993 to George W. Bush's tax cuts in 2001 and 2003. Yet key Senate Democrats, including Budget Committee Chairman Kent Conrad of North Dakota, oppose this approach.

Other hurdles for health care reform include the growing federal deficit, which will lead to greater scrutiny of all major initiatives. The CBO has concluded that under Obama's 2010 budget plan, government spending would continue to exceed historic levels even after expensive programs for easing the recession and stabilizing the financial system have ended. Nevertheless, Senator Conrad and House Budget Committee Chairman John Spratt of South Carolina said they would recommend preserving Obama's priorities as they craft a budget resolution to guide other committees in marking up their 2010 budgets.

The road to glory for Democrats who have spent 50 years or more seeking insurance coverage for all is clearly littered with obstacles. The result might be a phasing in of a less comprehensive reform plan with more modest benefits than many liberal Democrats favor and tighter controls on costs. But given the party's current power, public majorities favoring government intervention to ensure coverage, and private interests that recognize the system's unsustainability, the odds remain with Obama and his allies. If their reform affects the entire medical economy, it will represent a paradigm shift away from the incrementalism that has long dominated U.S. health policymaking.

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