

**The Health Care Bill: What HR 3200, “America’s Affordable Health Choices Act of 2009,” Says**  
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What does the bill, HR 3200, short-titled “America’s Affordable Health Choices Act of 2009,” actually say about major health care issues? I here pose a few questions in no particular order, citing relevant passages and offering a brief evaluation after each set of passages.

This bill is 1017 pages long. It is knee-deep in legalese and references to other federal regulations and laws. I have only touched pieces of the bill here. For instance, I have not considered the establishment of (1) “Health Choices Commissio0ner” (Section 141); (2) a “Health Insurance Exchange,” (Section 201), basically a government run insurance scheme to coordinate all insurance activity; (3) a Public Health Insurance Option (Section 221); and similar provisions.

This is the evaluation of someone who is neither a physician nor a legal professional. I am citizen, concerned about this bill’s effects on my freedom as an American. I would rather have used my time in other ways—but this is too important to ignore.

We may answer one question up front: How will the government will pay for all this? Higher taxes, more borrowing, printing money, cutting payments, or rationing services—there are no other options. We will all pay for this, enrolled in the government “option” or not.

(All bold type within the text of the bill is added for emphasis.)

**1. WILL THE PLAN RATION MEDICAL CARE?**

**This is what the bill says, pages 284-288, SEC. 1151. REDUCING POTENTIALLY PREVENTABLE HOSPITAL READMISSIONS:**

‘(ii) EXCLUSION OF CERTAIN READMISSIONS.—For purposes of clause (i), with respect to a hospital, **excess readmissions shall not include readmissions for an applicable condition for which there are fewer than a minimum number (as determined by the Secretary) of discharges for such applicable condition for the applicable period and such hospital.**

and, under “Definitions”:

“(A) APPLICABLE CONDITION.—The term ‘applicable condition’ means, subject to subparagraph (B), **a condition or procedure selected by the Secretary . . .**

and:

“(E) READMISSION.—The term ‘readmission’ means, in the case of an individual who is discharged from an applicable hospital, the admission of the individual to the same or another applicable hospital **within a time period specified by the Secretary** from the date of such discharge.

and:

“(6) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of— . . .

“(C) the measures of readmissions . . .

#### EVALUATION OF THE PASSAGES:

1. This section amends the Social Security Act
2. The government has the power to determine what constitutes an “applicable [medical] condition.”
3. The government has the power to determine who is allowed readmission into a hospital.
4. This determination will be made by statistics: when enough people have been discharged for the same condition, an individual may be readmitted.
5. This is government rationing, pure, simple, and straight up.
6. There can be no judicial review of decisions made here. The Secretary is above the courts.
7. The plan also allows the government to prohibit hospitals from expanding without federal permission: page 317-318.

### 2. WILL THE PLAN PUNISH AMERICANS WHO TRY TO OPT OUT?

**What the bill says, pages 167-168, section 401, TAX ON INDIVIDUALS WITHOUT ACCEPTABLE HEALTH CARE COVERAGE:**

“(a) TAX IMPOSED.—In the case of any individual who does not meet the requirements of subsection (d) at any time during the taxable year, there is hereby imposed a tax equal to 2.5 percent of the excess of—

(1) the taxpayer’s modified adjusted gross income for the taxable year, over

(2) the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer. . .

.”

#### EVALUATION OF THE PASSAGE:

1. This section amends the Internal Revenue Code.
2. Anyone caught without acceptable coverage and not in the government plan will pay a special tax.
3. The IRS will be a major enforcement mechanism for the plan.

### 3. WHAT CONSTITUTES “ACCEPTABLE” COVERAGE?

**Here is what the bill says, pages 26-30, SEC. 122, ESSENTIAL BENEFITS PACKAGE DEFINED:**

(a) IN GENERAL.—In this division, the term “essential benefits package” means health benefits coverage, consistent with standards adopted under section 124 to ensure the provision of quality health care and financial security . . .

(b) MINIMUM SERVICES TO BE COVERED.—The items and services described in this subsection are the following:

- (1) Hospitalization.

- (2) Outpatient hospital and outpatient clinic services . . .
- (3) Professional services of physicians and other health professionals.
- (4) Such services, equipment, and supplies incident to the services of a physician's or a health professional's delivery of care . . .
- (5) Prescription drugs.
- (6) Rehabilitative and habilitative services.
- (7) Mental health and substance use disorder services.
- (8) Preventive services . . .
- (9) Maternity care.
- (10) Well baby and well child care . . .

(c) REQUIREMENTS RELATING TO COST-SHARING AND MINIMUM ACTUARIAL VALUE . . .

(3) MINIMUM ACTUARIAL VALUE.—

(A) IN GENERAL.—The cost-sharing under the essential benefits package shall be designed to provide **a level of coverage that is designed to provide benefits that are actuarially equivalent to approximately 70 percent of the full actuarial value of the benefits** provided under the reference benefits package described in subparagraph (B).

EVALUATION OF THE PASSAGES:

1. The bill defines “acceptable coverage” and leaves no room for choice in this regard.
2. By setting a minimum 70% actuarial value of benefits, the bill makes health plans in which individuals pay for routine services, but carry insurance only for catastrophic events, (such as Health Savings Accounts) illegal.

**4. WILL THE PLAN DESTROY PRIVATE HEALTH INSURANCE?**

**Here is what it requires, for businesses with payrolls greater than \$400,000 per year.** (The bill uses “contribution” to refer to mandatory payments to the government plan.) Pages 149-150, SEC. 313, EMPLOYER CONTRIBUTIONS IN LIEU OF COVERAGE

(a) IN GENERAL.—A contribution is made in accordance with this section with respect to an employee if such contribution is equal to an amount equal to 8 percent of the average wages paid by the employer during the period of enrollment (determined by taking into account all employees of the employer and in such manner as the Commissioner provides, including rules providing for the appropriate aggregation of related employers). Any such contribution—

- (1) shall be paid to the Health Choices Commissioner for deposit into the Health Insurance Exchange Trust Fund, and
- (2) shall not be applied against the premium of the employee under the Exchange-participating health benefits plan in which the employee is enrolled.

(The bill then includes a sliding scale of payments for business with less than \$400,000 in annual payroll.)

**The Bill also reserves, for the government, the power to determine an acceptable benefits plan:** page 24, SEC. 115. ENSURING ADEQUACY OF PROVIDER NETWORKS.

5 (a) IN GENERAL.—A qualified health benefits plan that uses a provider network for items and services shall meet such standards respecting provider networks as the Commissioner may establish to assure the adequacy of such networks in ensuring enrollee access to such items and services and transparency in the cost-sharing differentials between in-network coverage and out-of-network coverage.

#### EVALUATION OF THE PASSAGES:

1. The bill does not prohibit a person from buying private insurance.
2. Small businesses—with say 8-10 employees—will either have to provide insurance to federal standards, or pay an 8% payroll tax. Business costs for health care are higher than this, especially considering administrative costs. Any competitive business that tries to stay with a private plan will face a payroll disadvantage against competitors who go with the government “option.”
3. The pressure for business owners to terminate the private plans will be enormous.
4. With employers ending plans, millions of Americans will lose their private coverage, and fewer companies will offer it.
5. The Commissioner (meaning, always, the bureaucrats) will determine whether a particular network of physicians, hospitals and insurance is acceptable.
6. With private insurance starved, many people enrolled in the government “option” will have no place else to go.

#### **5. DOES THE PLAN TAX SUCCESSFUL AMERICANS MORE THAN OTHERS?**

##### **Here is what the bill says, pages 197-198, SEC. 441. SURCHARGE ON HIGH INCOME INDIVIDUALS**

“SEC. 59C. SURCHARGE ON HIGH INCOME INDIVIDUALS.

“(a) GENERAL RULE.—In the case of a taxpayer other than a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to—

“(1) 1 percent of so much of the modified adjusted gross income of the taxpayer as exceeds \$350,000 but does not exceed \$500,000,

“(2) 1.5 percent of so much of the modified adjusted gross income of the taxpayer as exceeds \$500,000 but does not exceed \$1,000,000, and

“(3) 5.4 percent of so much of the modified adjusted gross income of the taxpayer as exceeds \$1,000,000.

#### EVALUATION OF THE PASSAGE:

1. This bill amends the Internal Revenue Code.
2. Tax surcharges are levied on those with the highest incomes.
3. The plan manipulates the tax code to redistribute their wealth.
4. Successful business owners will bear the highest cost of this plan.

#### **6. DOES THE PLAN ALLOW THE GOVERNMENT TO SET FEES FOR SERVICES?**

##### **What it says, page 124, Sec. 223, PAYMENT RATES FOR ITEMS AND SERVICES:**

(d) CONSTRUCTION.—Nothing in this subtitle shall be construed as limiting the Secretary’s authority to correct for payments that are excessive or deficient, taking into account the provisions of section 221(a) and the amounts paid for similar health care providers and services under other Exchange-participating health benefits plans.

(e) CONSTRUCTION.—Nothing in this subtitle shall be construed as affecting the authority of the Secretary to establish payment rates, including payments to provide for the more efficient delivery of services, such as the initiatives provided for under section 224.

#### EVALUATION OF THE PASSAGES:

1. The government’s authority to set payments is basically unlimited.
2. The official will decide what constitutes “excessive,” “deficient,” and “efficient” payments and services.

### 7. WILL THE PLAN INCREASE THE POWER OF GOVERNMENT OFFICIALS TO SCRUTINIZE OUR PRIVATE AFFAIRS?

#### What it says, pages 195-196, SEC. 431. DISCLOSURES TO CARRY OUT HEALTH INSURANCE EXCHANGE SUBSIDIES.

“(A) IN GENERAL.—The Secretary, upon written request from the Health Choices Commissioner or the head of a State-based health insurance exchange approved for operation under section 208 of the America’s Affordable Health Choices Act of 2009, **shall disclose to officers and employees of the Health Choices Administration or such State-based health insurance exchange, as the case may be, return information of any taxpayer** whose income is relevant in determining any affordability credit described in subtitle C of title II of the America’s Affordable Health Choices Act of 2009. Such return information shall be limited to—

“(i) taxpayer identity information with respect to such taxpayer,

“(ii) the filing status of such taxpayer,

“(iii) the modified adjusted gross income of such taxpayer (as defined in section 59B(e)(5)),

“(iv) the number of dependents of the taxpayer,

“(v) **such other information as is prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for such affordability credits** (and the amount thereof), and

“(vi) the taxable year with respect to which the preceding information relates or, if applicable, the fact that such information is not available.

And, page 145, section 312, EMPLOYER RESPONSIBILITY TO CONTRIBUTE TOWARDS EMPLOYEE AND DEPENDENT COVERAGE:

(3) PROVISION OF INFORMATION.—The employer provides the Health Choices Commissioner, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury, as applicable, with such information as the Commissioner may require to ascertain compliance with the requirements of this section.

#### EVALUATION OF THE PASSAGE:

1. This section amends the Internal Revenue Code
2. The bill opens up income tax return information to federal officials.
3. Any stated “limits” to such information are circumvented by item (v), which allows federal officials to decide what information is needed.
4. Employers are required to report whatever information the government says it needs to enforce the plan.

## **8. DOES THE PLAN AUTOMATICALLY ENROLL AMERICANS IN THE GOVERNMENT PLAN?**

**What it says, page 102, Section 205, OUTREACH AND ENROLLMENT OF EXCHANGE-ELIGIBLE INDIVIDUALS AND EMPLOYERS IN EXCHANGE-PARTICIPATING HEALTH BENEFITS PLAN:**

(3) AUTOMATIC ENROLLMENT OF MEDICAID ELIGIBLE INDIVIDUALS INTO MEDICAID.—The Commissioner shall provide for a process under which an individual who is described in section 202(d)(3) and has not elected to enroll in an Exchange-participating health benefits plan is automatically enrolled under Medicaid.

And, page 145, section 312:

(4) AUTOENROLLMENT OF EMPLOYEES.—The employer provides for autoenrollment of the employee in accordance with subsection (c).

### **EVALUATION OF THE PASSAGES:**

1. Do nothing and you are in.
2. Employers are responsible for automatically enrolling people who still work.

## **9. DOES THE PLAN EXEMPT FEDERAL OFFICIALS FROM COURT REVIEW?**

**What it says, page 124, Section 223, PAYMENT RATES FOR ITEMS AND SERVICES:**

(f) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review of a payment rate or methodology established under this section or under section 224.

And, page 256, SEC. 1123. PAYMENTS FOR EFFICIENT AREAS.

“(C) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, respecting—

“(i) the identification of a county or other area under subparagraph (A); or

“(ii) the assignment of a postal ZIP Code to a county or other area under subparagraph (B).”

### **EVALUATION OF THE PASSAGES:**

1. Sec. 1123 amends the Social Security Act, to allow the Secretary to identify areas of the country that underutilize the government’s plan “based on per capita spending.”

2. Parts of the plan are set above the review of the courts.