



AHLA Hospital and Health System Program: Current Status of Health Reform

February 26, 2010

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Michael Rodgers

CHA
THE CATHOLIC HEALTH ASSOCIATION
OF THE UNITED STATES

The Washington Post

Obama Endorses Health Industry's Goal to Rein In Costs

Despite Fanfare, Experts Say Plan Lacks Key Details

By Ceci Connolly and David Hilzenrath
Washington Post Staff Writers
Tuesday, May 12, 2009

MAY 14, 2009, 8:43 AM ET

Political Parties Prepare Their Spin on Health Reform

THE WALL STREET JOURNAL
WSJ.com

Conditions Seem Right for Some Type of Health Reform to Pass

ROLL CALL

May 13, 2009
By Norman Ornstein

Impossible to evaluate the status of health reform through the media

OPINION | MAY 15, 2009

Health Costs Are the Real Deficit Threat

That's why President Obama is making health-care reform a priority.

By PETER R. ORSZAG

THE WALL STREET JOURNAL
WSJ.com

May 26, 2009

New Optimism on U.S. Healthcare, But Obstacles Remain

 **REUTERS**

MAY 18, 2009, 9:48 AM ET

White House Again Leaves Door Open to Taxing Health Benefits

THE WALL STREET JOURNAL
WSJ.com

May 21, 2009

Tax Proposals Draw Critics in Talks on Financing Health Insurance

The New York Times

CHART 2

Health Care Reform... Is Now the Right Time?

Which comes closer to describing your own views? Given the serious economic problems facing the country...

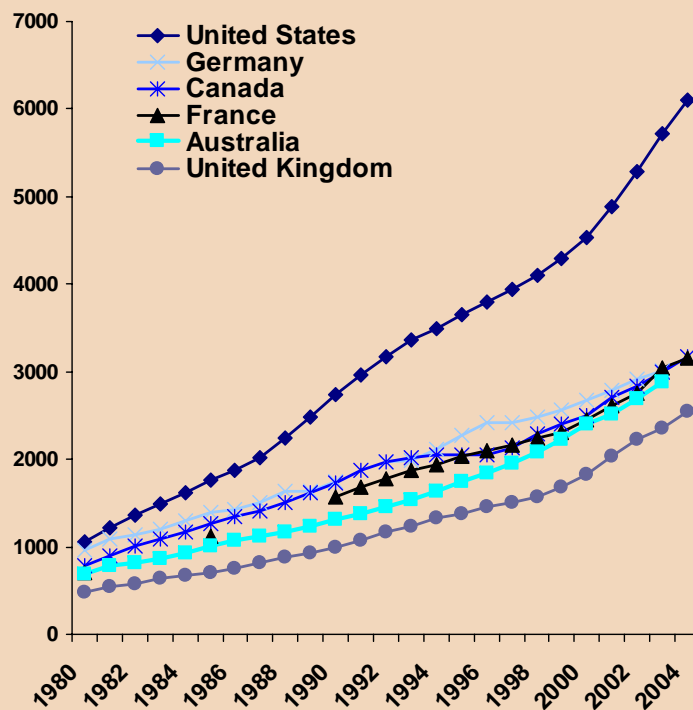


Note: Asked of full sample in Nov09. "Don't know/Refused" responses not shown.
Sources: Kaiser Family Foundation polls.

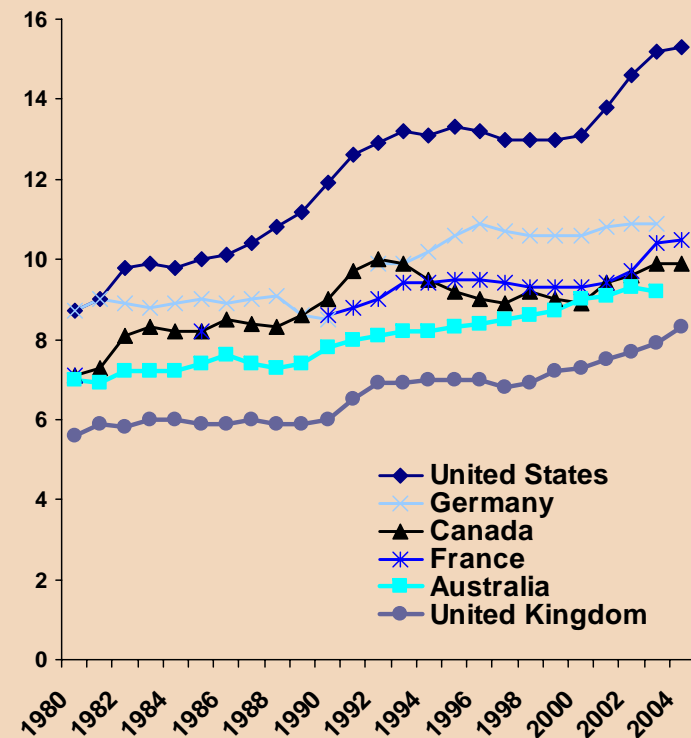


International Comparison of Spending on Health, 1980–2004

Average spending on health per capita (\$US PPP)



Total expenditures on health as percent of GDP



Data: OECD Health Data 2005 and 2006.

Source: Commonwealth Fund National Scorecard on U.S. Health System Performance, 2006.

Need for (and likelihood of) Health System Reform

- Economic Problems require addressing healthcare costs: currently at 16% of GDP and rising
- Premature deaths each year – up to 100,000
- Currently, 47 million uninsured (9 million children)
- Health Industry Leaders Agreement on trio of problems: access, quality and affordability
- The President and Congress in the National Election promised to do something major to fix health system

Robert Wood Johnson: Cost of Doing Nothing

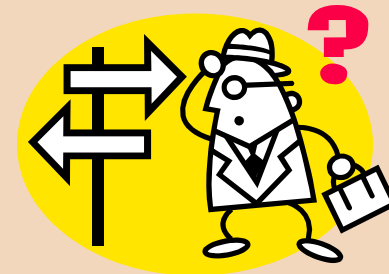
- In 29 States – number of people without insurance would increase by more than 30 %
- Businesses would see their premiums continue to increase [e.g. – note recent example of Anthem BC/BS in California]
- Medicaid and SCHIP spending would rise by more than 75 percent
- Amount of Uncompensated care would continue to increase

A Snapshot of Health Policy History

- 1912** – Health care reform is key plank of President Roosevelt's losing presidential campaign
- 1950** – President Truman proclaims the need for health care reform, beginning a march of presidents who would do the same
- 1965** – Medicare is enacted into law-- Part B premium is \$3 per month
- 1988** – Congress passes major Medicare overhaul to cover catastrophic illness and prescription drugs
- 1989** – Congress repeals Medicare Catastrophic Coverage Act

A Snapshot of Health Policy History

- 1993** – Clinton effort to overhaul health system collapses under its own weight
- 1997** – Balanced Budget Act imposes biggest payment cuts in Medicare program's history
- 2003** – President Bush signs into law the largest Medicare expansion ever to pay for seniors' prescription drugs. Part B premium is \$58.70
- 2009** – Both chambers in Congress pass sweeping health reform legislation, proposing to spend at least twice the cost of the Medicare drug benefit
- 2010** – Democrats lose 60 votes in Senate
Health Reform Becomes Law ???



Status of Reform Legislation

Senate	House	White House	U.S. Public
<ul style="list-style-type: none">Passed bill on Dec. 24 by a vote of 60-39 <p><i>Landmark Events</i></p>	<ul style="list-style-type: none">Passed bill on Nov. 7 by a vote of 220-215.	<ul style="list-style-type: none">Skipped ConferenceNegotiating with Senate and House leadersWaiting outcome of Health Summit	<ul style="list-style-type: none">Still skeptical of reform's benefits vs. costContinued education needed if bill becomes law

Key Elements of House & Senate Bills - Coverage

- Individual Mandate
- Health Insurance Exchanges –
 - National vs. State based
- Subsidies for individuals and families up to 400% FPL
- Employer Mandate – subsidies for small business
 - “Play or Pay” vs. Penalty if employee receives tax subsidy in exchange
- Expanded Medicaid for all eligible individuals –
 - 150% FPL vs. 133% FPL

Key Elements of House & Senate Bills - Coverage

- Insurance Reforms
 - guaranteed issue, renewability, limits on premium variation, no lifetime limits on benefits, and prohibition on denial of pre-existing condition coverage
- Limit on premium increases within the Exchange
- Essential Benefit Package
 - Health Benefits Advisory Council
- LTC and CLASS Act Provisions

Key Elements of Senate & House Bills : Delivery System Reforms & Cost Containment

- Restructure Medicare Advantage Programs
- Waste, fraud and abuse provisions
- Administrative Simplification
- Comparative effectiveness research
- Strengthen Care Coordination & Prevention
 - Medical home; Primary care training/workforce programs; Coverage of preventive care with no cost sharing; Wellness programs
- Centers for excellence and innovation

Elements of Senate & House Bills : Delivery System Reforms & Cost Containment

- Link payment to outcomes and other quality measures
 - Create accountable care organizations
 - Payment reductions for preventable hospital readmissions
 - Move from pay-for-reporting to pay-for-performance/value-based purchasing (Senate)

Outstanding Issues Between the Senate & House

- Coverage
 - Subsidies & Reduction in number of Uninsured
 - Medicaid Expansion
 - Reimbursement primary care
 - Exchange: National vs. State-based
- Delivery System Reforms & Cost Containment (Provider issues)
 - DSH payment reductions
 - Hospital Readmissions
 - Medicare Commission
 - Medicare provider payments
- Financing

Conclusion

- Where do we go from here?

Political Landscape

- Presidential / Congressional Summit
- Congressional Action: Reconciliation ?
- Jobs Bill – Health Care Extenders
- Incremental Approaches: [e.g.- Insurance Reforms, Medicaid Expansion, FMAP Incentives, etc.]

Maybe – More of the Same?



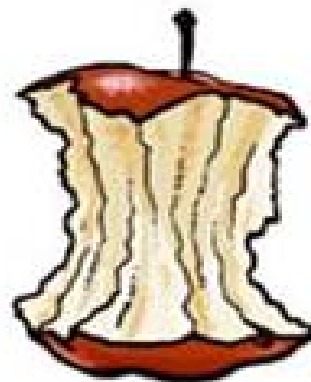
APPLES AND ORANGES - HEALTH CARE REFORM



SOCIALISM



HOUSE BILL



SENATE BILL



**THE CORE
ELEMENTS
WE CAN ALL
SUPPORT**

Constitutionality of Mandates

- **Both House and Senate Bills contain individual and employer mandates to purchase insurance, with tax assessed if not purchased (“play or pay”)**
- **Question – Does Congress have the power to impose such mandates? Put another way, does the 10th Amendment preclude Congress from imposing such mandates.**
- **No existing legislation serves as perfect legal analogy for such mandates**
- **First line of constitutional challenge would likely be under Commerce Clause – an individual’s lack of insurance does not affect interstate commerce**

Constitutionality of Mandates

- **Most scholars believe that because health care substantially affects interstate commerce, such mandates would be upheld under existing Supreme Court precedent . *Gonzales v. Raich*, 545 U.S. 1; 125 S. Ct. 2195; 162 L. Ed. 2d 1 (2005).**
- **However, some contend that health care is not “truly commercial at its core” and thus, mandates are not supported by the Commerce Clause. *United States v. Lopez*, 514 U.S. 549 ;115 S. Ct. 1624; 131 L. Ed. 2d 626 (1995)**
- **Even if Commerce Clause argument were to fail, some argue that mandates are constitutional under Congress’ authority to tax and spend for the general welfare. Others argue that the “general welfare” power can be used only in furtherance of another enumerated power.**

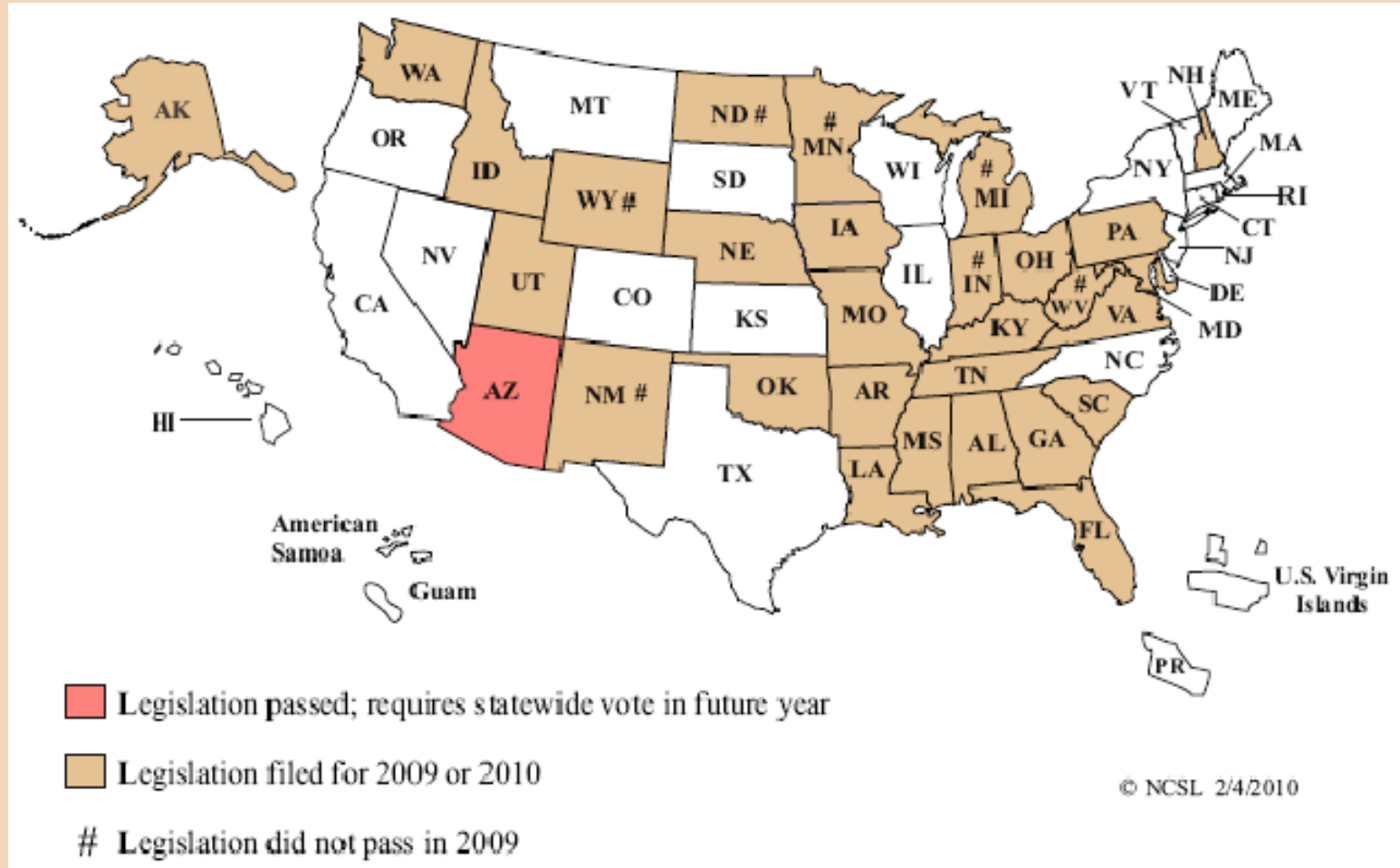
Constitutionality of Mandates

- **Open questions:**
 - **Could some individuals object that requiring them to purchase insurance violates their religious rights under the First Amendment?**
 - **Senate bill grants an exemption from the mandate to “members of a recognized religious sect . . . which is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments . . . toward the cost of, or provides services for, medical care.”**
IRC §1402(g) (provision currently exempts Amish from having to pay into Social Security)
 - **Could mandating the purchase of insurance be considered a “taking”?**

State Reaction to Federal Health Reform

- In reaction to federal health reform proposals, states have been looking at ways to limit or prohibit the application of certain provisions to their citizens.
- Since Fall 2009, 21 states have had constitutional amendments proposed to prevent imposition of federal insurance mandates and 10 states have had bills introduced attempting to do the same.
- In Arizona, the legislature passed a proposed constitutional amendment blocking mandates that will go to the voters in November 2010
- In Virginia, the Democrat-controlled Senate passed a bill prohibiting the compelled purchase of health insurance. (5 Democrats joined 18 Republicans in vote) Expected to be passed by GOP-controlled House.
- Many contend that these proposals are largely symbolic, given long-settled pre-emption principles.

States with Legislation Opposing Health Reform



Proposed Arizona Constitutional Amendment

Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:

2. Health care; definitions

Section 2. A. To preserve the freedom of Arizonans to provide for their health care:

- 1. A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system.**
- 2. A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.**

B. Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule.

Virginia Legislation

§ 38.2-3430.1:1. Health insurance coverage not required.

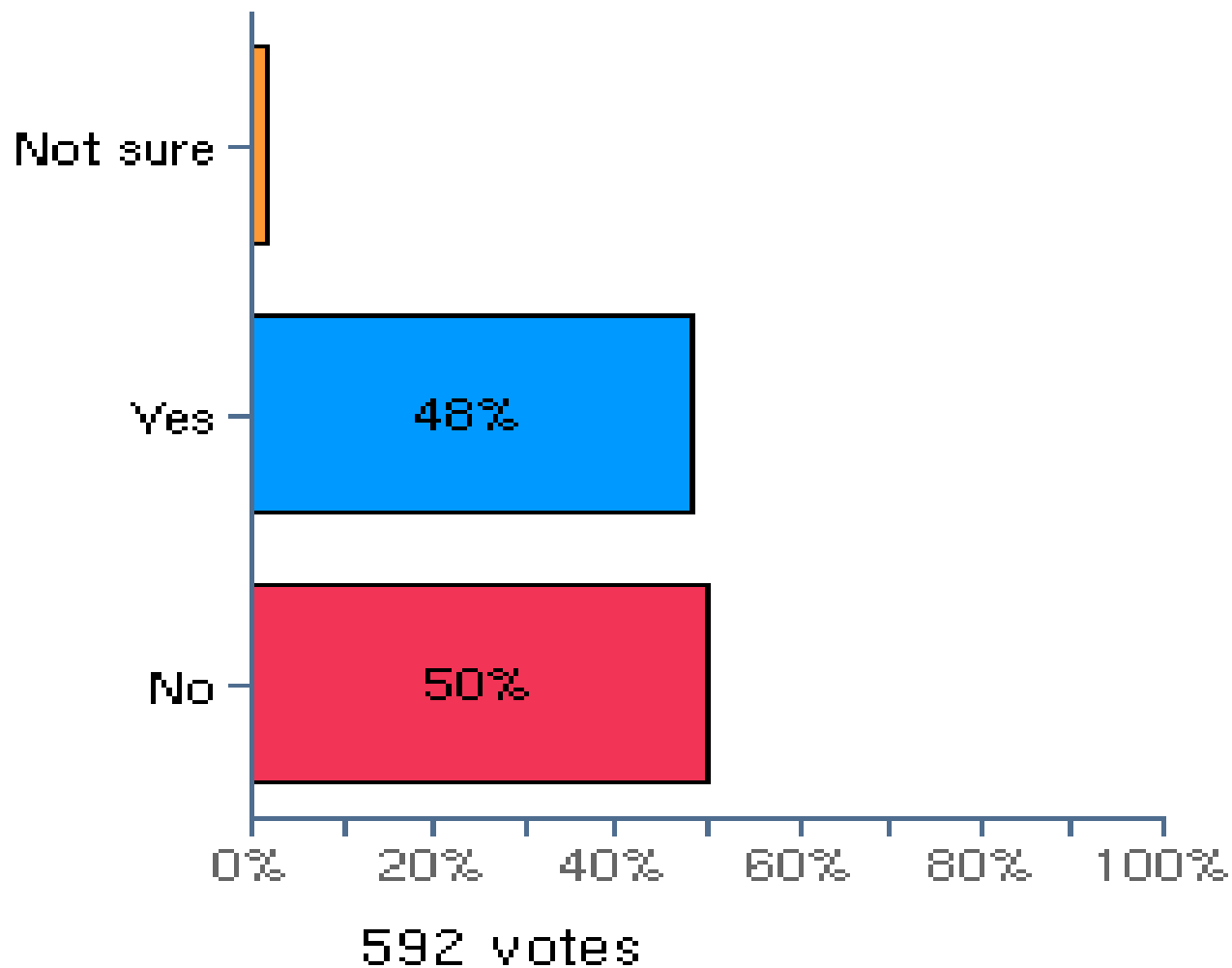
No resident of this Commonwealth, regardless of whether he has or is eligible for health insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the Commonwealth or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage.

No provision of this title shall render a resident of this Commonwealth liable for any penalty, assessment, fee, or fine as a result of his failure to procure or obtain health insurance coverage.

This section shall not apply to individuals voluntarily applying for coverage under a state-administered program pursuant to Title XIX or Title XXI of the Social Security Act.

Washington Post Poll (February 2, 2010)

Va. Senate bills say no to insurance mandate: Do you agree?



Tax Exemption Provisions

In addition to existing tax exemption requirement, the following provisions in the Senate Bill apply to any section 501(c)(3) organization that operates at least one hospital facility:

- **Community Needs Assessment** - each hospital must conduct a needs assessment at least once every 3 years and must adopt an implementation strategy to meet the identified needs. Failure to complete a community needs assessment over 3-year period could result in a tax of \$50,000. Hospitals to publicly report how they are meeting (or not meeting) the identified needs, and provide public with audited financial statements.
- **Financial Assistance Policy** – hospital must adopt, implement, and widely publicize a written financial assistance policy. In addition, hospitals cannot bill patients who qualify for financial assistance more than the lowest amounts charged to individuals who have insurance coverage for such care and may not use gross charges when billing such patients.

Tax Exemption Provisions

- **Debt Collection** – hospital may not undertake extraordinary collection actions against a patient without first making reasonable efforts to determine whether the individual is eligible for the hospital's financial assistance policy.
- **Reporting and Disclosure** – IRS required to review information about a hospital's community benefit activities at least once every 3 years. HHS to report annually to Congress on charity care, bad debt expenses, and unreimbursed costs of means-tested and non-means tested government programs for **all** hospitals (exempt, for-profit, government.) Also to report on levels of community benefit for exempt hospitals. HHS to conduct study of trends over 5 years.

HUH?...

I WANT NO
PART OF OBAMA'S
SOCIALIZED
MEDICINE!



... AND HE'D
BETTER KEEP
HIS HANDS OFF
MY MEDICARE,
TOO!

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