Nixon and the PPACA

Michael Meyer*

I. INTRODUCTION

The late Senator Edward Kennedy often recalled his failure to make a deal with Richard Nixon on health care as his biggest legislative regret.\(^1\) Nixon came closer than any president until Barack Obama to enacting universal health care.\(^2\) But, Nixon’s involvement in the infamous Watergate Scandal often overshadows his health reform efforts. In Section II, this article details Nixon’s proposals, and Section III discusses why they failed. Section IV explores how his proposals impacted modern health reform efforts. Finally, Section V discusses why the Patient Protection and Affordable Care Act (PPACA) should have adopted more of Nixon’s plan.

II. NIXON’S EFFORTS IN THE 1970S

Health care reform was a personal issue for Nixon.\(^3\) He grew up poor and lost two brothers to tuberculosis.\(^4\) As a California congressman, Nixon first proposed national health insurance in 1947\(^5\) and continued his efforts after he became President in 1968.

Nixon offered his first proposal, as president, for national health

---

* Juris Doctor Candidate, Loyola University Chicago School of Law, Class of 2014. Mr. Meyer is a staff member of Annals of Health Law.
4. Id.
5. Id.
insurance on February 18, 1971.\textsuperscript{6} Although it never came to a committee vote in Congress, his proposed National Health Insurance Partners program (NHIP) would provide the groundwork for nearly every comprehensive universal health plan in the future, including his 1974 plan.\textsuperscript{7} Noting America’s soaring medical bills, Nixon explained that he built his strategy on four basic principles: assuring equal access, balancing supply and demand, organizing for efficiency, and building on strengths.\textsuperscript{8} He proposed a National Health Insurance Standards Act, requiring employers to provide basic health insurance coverage for their employees.\textsuperscript{9} He also proposed a Family Health Insurance Plan that would provide subsidized insurance to poor families, largely replacing Medicaid.\textsuperscript{10} Medicaid would continue, however, for the aged poor, blind, and disabled.\textsuperscript{11} Moreover, Nixon’s plan required each State to establish insurance pools that would offer insurance to those who did not qualify for either program.\textsuperscript{12} Nixon also noted the benefits of Health Maintenance Organizations (HMOs): providing more doctors and facilities in inner city and rural areas, producing more health professionals, researching issues concerning medical malpractice suits and insurance, and encouraging preventative care.\textsuperscript{13}

The NHIP ultimately fell victim to what is known in health policy circles

\begin{itemize}
  \item \textsuperscript{7} ALTMAN & SHACTMAN, supra note 2, at 42.
  \item \textsuperscript{8} Nixon, supra note 6.
  \item \textsuperscript{9} Nixon noted that the Federal Government would pay nothing for this program, as the cost would be shared by employers and employees; the employee contribution would have a ceiling of thirty-five percent during the first two and one half years and twenty-five percent after. Id.
  \item \textsuperscript{10} Single people and childless couples did not qualify. Id.
  \item \textsuperscript{11} Id.
  \item \textsuperscript{12} Id.
  \item \textsuperscript{13} Id.
\end{itemize}
as “Altman’s Law.”

Aside from Nixon’s proposal, Ted Kennedy introduced his “Health Security Plan,” the AMA proposed Medicredit, Senator Russell Long and the insurance companies joined forces to formulate their own plan, and by July of 1971, twenty-two health reform bills had been filed. Everyone supported health reform, but only the reform that they put forth; consequently, none of the twenty-two health reform bills ever reported out of committee. Nixon’s failed proposal forced him to draft a new program.

On February 6, 1974, Nixon introduced the Comprehensive Health Insurance Plan (CHIP). In a message to Congress, Nixon noted that health reform was even more urgent than when he first proposed it in 1971. He organized his plan around seven principles and explained that

14. “Nearly every major interest group favors universal coverage and health system reform, but, if the plan deviates from their preferred approach, they would rather retain the status quo.” ALTMAN & SHAFTMAN, supra note 2, at 44.
15. Id. at 43-44.
16. The American Medical Association (AMA) is the largest organization representing American physicians. Id. at 381-82.
17. Id. at 44.
18. Id.
19. Id.
20. Id.
23. Id.
24. “First it offers every American an opportunity to obtain a balanced, comprehensive range of health insurance benefits; second, it will cost no American more than he can afford to pay; third it builds on the strength and diversity of our existing public and private systems of health financing and harmonizes them into an overall system; fourth, it uses public funds only where needed and requires no new Federal taxes; fifth, it would maintain freedom of choice by patients and ensure that doctors work for their patient, not for the Federal Government; sixth, it encourages more effective use of our health care resources; and finally, it is organized so that all parties would have a direct stake in making the system work – consumer, provider, insurer, State governments and Federal Government.” Id.
it would offer every American the same protection through one of three programs: Employee Health Insurance, Assisted Health Insurance, or an improved Medicare Plan.\textsuperscript{25} All three programs included identical benefits for all Americans and would not exclude anyone based on the nature of his or her illness.\textsuperscript{26} Like the 1971 proposal, the CHIP required that all employers offer their employees health insurance; however, this time it made temporary Federal subsidies available for employers who faced significant cost increases.\textsuperscript{27} Nixon once again introduced a government subsidized coverage program, Assisted Health Insurance, designed to replace Medicaid for most services.\textsuperscript{28} This program, however, would cover everyone not offered coverage under Employee Health Insurance or Medicare, meaning childless individuals would be eligible as well.\textsuperscript{29} Additionally, Nixon proposed to improve Medicare by covering outpatient drugs and limiting out-of-pocket costs.\textsuperscript{30} Nixon also proposed creating Professional Standards Review Organizations tasked with reviewing health services provided under CHIP,\textsuperscript{31} as well as state oversight over insurers and providers.\textsuperscript{32} This comprehensive plan improved upon the 1971 proposal’s

\begin{itemize}
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Employees would pay thirty-five percent of the premium for the first three years and twenty-five percent thereafter, similar to the requirements in the 1971 proposal. Id. Individuals would pay the first $150 in annual medical expenses, and a separate fifty-dollar deductible provision would apply for out-patient drugs. There would be a maximum of three medical deductibles per family. Id. After reaching the deductible limit, the individual would pay twenty-five percent of additional bills, but there was an annual catastrophic maximum expense of $1,500 per family. Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id.
\item \textsuperscript{30} Individuals enrolled in Medicare would pay the first $100 for care received and the first $50 toward outpatient drugs. Id. Individuals would then pay twenty percent of any bills above the deductible limit, but capped out-of-pocket costs at $750. Id.
\item \textsuperscript{31} These organizations would be operated by private physicians and would be charged with “maintaining high standards of care and reducing needless hospitalization.” Id.
\item \textsuperscript{32} In regards to insurers, states “would approve specific plans, oversee rates, ensure adequate disclosure, require an annual audit, and take other appropriate measures.” Id.
\end{itemize}
III. Why the CHIP Failed

In February 1974, Senators Bob Packwood and Wilbur Mills, the influential chairman of the Ways and Means Committee, agreed to cosponsor Nixon’s bill. Nixon’s rival, Ted Kennedy, however, began secretly meeting with Mills in hopes of forming a new health reform plan, and by April 1974, Kennedy and Mills announced their own plan. Meanwhile, Russell Long, the powerful chairman of the Senate Finance Committee, and Senator Abraham Ribicoff joined together with their own health reform bill. Suddenly Nixon found himself in a situation similar to 1971: competing health reform plans threatened to cancel each other out.

In the late spring of 1974, Nixon, Kennedy, and Mills agreed to meet in order to craft a compromise, but their efforts ultimately failed. Kennedy was unwilling to support an employer mandate where employers purchased coverage from private insurance companies, something Nixon insisted on, and the potential deal fell through. Kennedy later cited the failure to reach a deal as his biggest legislative regret.

In the months following the failed compromise, health reform efforts

Meanwhile, for providers, the state “would assure fair reimbursement for physician services, drugs, and institutional services, including a prospective reimbursement system for hospitals.” Id.

33. ALTMAN & SHAFTMAN, supra note 2, at 55.
34. Id.
35. Id.
36. Id. at 56-57.
37. Id. at 57.
38. Id. at 58.
39. Id.
40. Pearlstein, supra note 1.
made little progress. The Watergate Scandal grew, and on August 8, 1974, Nixon became the first President in American history to resign. Although Nixon’s successor, Gerald Ford, addressed Congress days later and stated he would seek bipartisan effort to pass national health coverage, he soon turned his focus to other national issues. Ford’s distracted focus, coupled with the competing health reform bills, meant Nixon’s plan for national health coverage never came to fruition.

IV. INFLUENCE ON THE PPACA

While Nixon failed to successfully implement his healthcare policies in the 1970’s, his proposed plans laid the foundation for Obama’s comprehensive health reform, the PPACA, signed into law on March 23, 2010. Obama made health reform a core part of his election campaign in 2008 and upon winning the election, health reform became a primary agenda item for his administration.

The PPACA resembles the CHIP in many ways. First and foremost, it attempts to significantly expand health coverage. Similar to Nixon’s employer-mandated coverage, the PPACA requires employers with fifty or more full-time employees to offer their employees coverage, provided that

41. Altman & Shactman, supra note 2, at 58.
43. Hall, supra note 3.
47. Kaiser Fam. Found., supra note 44.
at least one full-time employee receives a premium tax credit.\textsuperscript{48} Employers with more than two hundred employees must automatically enroll their employees into health insurance plans offered by the employer,\textsuperscript{49} while employers with up to fifty full-time employees are exempt from any penalties for failure to offer their employees coverage.\textsuperscript{50} Much like Nixon’s plan to offer temporary subsidies to employers who would have faced significant cost increases, the PPACA offers a tax credit to small businesses that do purchase health insurance for their employees.\textsuperscript{51} Although the PPACA does not require an employer-mandate, it does include an individual mandate.\textsuperscript{52}

The PPACA expands Medicaid, analogous to Nixon’s plan regarding Assisted Health Insurance’s goal of subsidizing those who could not afford coverage.\textsuperscript{53} Similar to Nixon’s proposal to enact a program dedicated to researching malpractice suits and insurance, the PPACA calls for awarding five-year demonstration grants to states to develop, implement, and evaluate alternatives to current tort litigations.\textsuperscript{54} The PPACA even touches on workforce training and development,\textsuperscript{55} which Nixon discussed during his

\textsuperscript{48} The premium tax credits are available to individuals and families with incomes between 100-400\% of the Federal Poverty Level. \textit{Id.} at 2. Those tax credits are available to purchase insurance through Health Insurance Exchanges. \textit{Id.} Those employers who fit into this category but do not offer coverage to their employees will be assessed a fee of $2,000 per full time employee, excluding the first 30 employees from the assessment. \textit{Id.} at 1.

\textsuperscript{49} Employees may opt out of coverage. \textit{Id.} at 1.

\textsuperscript{50} \textit{Id.}

\textsuperscript{51} This tax credit is available for employers with no more than twenty-five employees and average annual wages of less than $50,000. \textit{Id.} at 3.

\textsuperscript{52} Requires U.S. citizens to have qualifying health coverage; failure to comply must pay a tax penalty each year. \textit{Id.} at 1.

\textsuperscript{53} PPACA seeks to expand Medicaid to all non-Medicare individuals under the age of sixty-five with incomes up to 133\% of the Federal Poverty Level based on modified adjusted gross income. \textit{Id.}

\textsuperscript{54} \textit{Id.} at 9.

\textsuperscript{55} PPACA will establish a multi-stakeholder Workforce Advisory Committee to develop a national workforce strategy, work to increase the number of Graduate Medical Education training positions, increase workforce supply and support training of health
proposals in the 1970’s.

V. HOW THE PPACA COULD HAVE DONE MORE

Passing the PPACA, the largest health reform plan and one of the biggest legislative achievements in recent history, was a remarkable feat. However, Nixon proposed the core ideas from the PPACA nearly forty years prior to its passage. Some argue that Nixon’s CHIP was stronger than the PPACA. Perhaps Obama would have been wise to incorporate more of the CHIP into the PPACA.

Despite the PPACA’s requirements for certain employers to provide their employees health insurance, it falls far short of the employer mandate that Nixon included in the CHIP. While the PPACA does mandate that employers with over two hundred employees provide insurance, employers that have between fifty-one and one hundred ninety-nine employees may opt not to provide coverage, and instead pay a fee. Some argue that employers may decide that it is more cost-efficient to not insure their employees and just pay the fee, leaving their employees on their own to find coverage. Meanwhile, employers with fifty or less employees face no penalty if they fail to provide their employees with coverage. This is a far cry from employer-mandated health coverage.

professionals through scholarships and loans, address the projected shortage of nurses and retention of nurses, and support the development of training programs that focus on primary care models. Id. at 12.

57. KAISER FAM. FOUND., supra note 44.
58. Id.
60. KAISER FAM. FOUND., supra note 44.
Instead, the PPACA contains an individual mandate.\(^{61}\) Those individuals who forego health insurance (and are not eligible for Medicaid or Medicare) will have to pay a tax each year.\(^{62}\) The government will give a premium credit to those who cannot afford health insurance, but still do not qualify for Medicaid, to be used to purchase insurance through the Health Care Exchanges.\(^{63}\) The Health Care Exchanges will be state-based, administered by a governmental agency or non-profit organization, and provide a marketplace for individuals to purchase insurance.\(^{64}\) Instead of providing tax credits to individuals and setting up fifty separate, state-run insurance exchanges,\(^ {65}\) Obama and Congress should have followed Nixon’s advice and created an employer-based mandate.

The majority of Americans already receive their health coverage from employers.\(^ {66}\) Employer-mandated coverage would just build onto an existing system, and in turn go a long way towards the goal of insuring every American.\(^ {67}\) Many oppose employer-mandated coverage, evidenced in part by the fact that it has been proposed and subsequently rejected multiple times.\(^ {68}\) Admittedly, it is expensive for small businesses to insure their employees;\(^ {69}\) consequently, small businesses, the Chamber of Commerce, and conservative and libertarian groups have opposed previous attempts to enact an employer mandate.\(^ {70}\)

---

61. Id.
62. Id.
63. Id. at 2.
64. Id. at 4.
65. Id.
67. Id. at 5.
68. ALTMAN & SHACTMAN, supra note 2, at 247.
70. ALTMAN & SHACTMAN, supra note 2, at 247.
Nixon offered a potential solution to the high costs that small businesses would incur if the government enforced an employer-mandate: temporary Federal subsidies. The PPACA has a similar approach, as it offers small businesses tax credits if they choose to insure their employees. If the PPACA implemented an employer-mandate, then it follows that significantly more small businesses would need some sort of assistance to comply. But, with an employer-mandate, significantly more individuals would no longer need a tax credit to use in the Health Insurance Exchanges because their employer would provide their insurance. Thus, the federal government could use the money originally intended as tax credits for individuals as tax credits for the small businesses now insuring those individuals.

Another way to offset the high costs that businesses incur from insuring their employees is to look to employee contributions. In 2010, the average insured employee contributed nineteen percent of their premium coverage. Nixon’s CHIP, on the other hand, required employees to contribute thirty-five percent of their premium for their first three years and twenty-five percent after that. While employees would most likely be reluctant to contribute as much as thirty-five percent of their premium coverage, perhaps a middle ground between the CHIP’s proposal and the 2010 average would have lessened the burden on employers if the PPACA had enforced an employer-mandate.

In addition to adopting the CHIP’s employer-mandated health coverage,

---

71. Nixon, supra note 22.
72. Qualifying employers must have no more than twenty-five employees and average annual wages of less than $50,000. Kaiser Fam. Found., supra note 44, at 3.
74. Nixon, supra note 22.
the PPACA should have also embraced the CHIP’s strict oversight of insurance companies. The State role in the PPACA consists mainly of setting up the Health Care Exchanges, overseeing Medicaid expansion, and establishing a program to serve as an advocate for people with private coverage in the individual and small group markets.\textsuperscript{75} The CHIP went further, requiring states to approve specific plans, oversee rates, ensure adequate disclosure, require an annual audit, and take other appropriate measures.\textsuperscript{76} Finally, the CHIP proposed that states would assure fair reimbursement for physician services, drugs, and institutional services.\textsuperscript{77} Such strict oversight would theoretically help control costs by preventing insurance companies from manipulating the marketplace. The CHIP provided the foundation for much of the PPACA, but the PPACA could have expanded coverage even further, while effectively controlling costs, by incorporating more of Nixon’s proposals.

\textbf{VI. CONCLUSION}

Nixon provided many of the ideas that laid the groundwork for modern health care reform.\textsuperscript{78} Proposals such as employer-mandated health coverage, expansion of government-subsidized coverage, and a comprehensive benefit package, just to name a few, paved the way for Obama to sign the PPACA into law nearly forty years later. While PPACA marked a monumental step in health care reform, it could have done more by adhering more closely to Nixon’s proposals from the 1970s. A full-fledged employer mandate would build upon a system that already covers the majority of Americans, guaranteeing coverage for millions of citizens.

\textsuperscript{75} \textit{Kaiser Fam. Found.}, \textit{supra} note 44, at 7.
\textsuperscript{76} \textit{Nixon}, \textit{supra} note 22.
\textsuperscript{77} \textit{Id.}
\textsuperscript{78} \textit{Altman & Shachtman}, \textit{supra} note 2, at 35.
Furthermore, adopting Nixon’s strict regulations would help to keep insurance companies in check, helping to keep costs down for all insured individuals. Perhaps future health care reform efforts can continue to learn from Ted Kennedy’s mistake.\textsuperscript{79}

\textsuperscript{79} Pearlstein, \textit{supra} note 1.