ANNALS OF HEALTH LAW
ADVANCE DIRECTIVE

VOLUME 18 **SPRING 2009** **PAGES 94-102**

Health Care in a Time of Financial Crisis: Is the Economic Downturn a Sufficient Excuse to Delay Health Reform Once Again?

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In his address to Congress on February 24, 2009, President Obama expressed his commitment to achieving healthcare reform within the next year as one of his top three priorities.[1] In order to achieve this, President Obama's budget proposal sets aside $633.8 billion over the next ten years for a Health Reform Reserve Fund;[2] however, the recent economic downturn could inhibit this ambitious proposal, as many argue that, in light of America's economic situation, healthcare reform can wait.[3] Yet, health care and the economy are intertwined. In 2009, health care is expected to reach 17.6% ($2.5 trillion) of the U.S. gross

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[1] President Barack Obama, Address to Joint Session of Congress (Feb. 24, 2009) (transcript available at http://www.whitehouse.gov/the_press_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress).

[2] SENATE BUDGET COMM., BRIEF ANALYSIS OF PRESIDENT OBAMA'S FY 2010 BUDGET BLUEPRINT 10 (Feb. 27, 2009), *available at* http://budget.senate.gov/democratic/statements/2009/Obama%20FY%202010%20Budget%20Brief%20Analysis_022709.pdf.

[3] *See 49% Say Obama Should Delay Health Care Reform Until Economy is Better*, RASMUSSEN REPORTS, Mar. 2, 2009, http://www.rasmussenreports.com/content/view/full/18671; *see also* Conservatives for Patients' Rights, http://www.conservativesforpatientsrights.com/ (last visited Mar. 11, 2009); Jim Kuhnhenn, *Obama Says Long-Term Investments Cannot Wait*, ASSOCIATED PRESS, MAR. 12, 2009, http://www.google.com/hostednews/ap/article/ALeqM5hEx3tiPJhZQLVqjNmHR_oP6FZMuwD96SMG200.

domestic product (GDP) and by 2018 will reach 20.3% ($4.4 trillion);[4] this rapid growth in healthcare costs is not sustainable.[5]

The recession only exacerbates underlying problems in America's healthcare system. As unemployment rises, so too does the number of uninsured Americans, resulting in increased financial strain on state Medicaid programs.[6] As many Americans are one pink slip away from losing their employer-based health benefits, these issues continue to increase in importance and urgency. The United States cannot ignore the financial problems of over 45 million[7] uninsured Americans; rather, the failing system must be reformed.

I. HEALTH CARE COSTS AND THE INEFFICIENT ALLOCATION OF RESOURCES IN THE CURRENT SYSTEM

The United States spends more on health care per capita than any other country.[8] Despite higher spending, Americans are, on average, no healthier than people in other developed countries,[9] and tens of millions of Americans are uninsured.[10] These uninsured Americans without access to affordable health care impose substantial costs on the U.S. economy;[11] lack of insurance has been linked to shorter life spans, educational and developmental impairments in children, poor health, and decreased productivity in the workplace.[12] As a consequence of

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[4] Andrea Sisko et. al., *Health Spending Projections Through 2018: Recession Effects Add Uncertainty to the Outlook*, 28 HEALTH AFF. (WEB EXCLUSIVE) w346, w346-w347 (2009).
[5] GOV'T ACCOUNTABILITY OFFICE, HEALTH CARE: UNSUSTAINABLE TRENDS NECESSITATE COMPREHENSIVE AND FUNDAMENTAL REFORMS TO CONTROL SPENDING AND IMPROVE VALUE 1, 3-6 (2004), http://www.gao.gov/new.items/d04793sp.pdf.
[6] VERNON SMITH ET AL., KAISER COMM'N ON MEDICAID & THE UNINSURED, HEADED FOR A CRUNCH: AN UPDATE ON MEDICAID SPENDING, COVERAGE, AND POLICY HEADING INTO AN ECONOMIC DOWNTURN 8 (2008), *available at* http://kff.org/medicaid/upload/7815ES.pdf.
[7] KAISER COMM'N ON MEDICAID & THE UNINSURED, FIVE BASIC FACTS ON THE UNINSURED 1 (2008) [hereinafter FIVE BASIC FACTS], *available at* http://kff.org/uninsured/upload/7806.pdf.
[8] KAISER FAMILY FOUND., HEALTH CARE SPENDING IN THE UNITED STATES AND OECD COUNTRIES (2007), http://www.kff.org/insurance/snapshot/chcm010307oth.cfm.
[9] KAISER FAMILY FOUND., *supra* note 8.
[10] FIVE BASIC FACTS, *supra* note 7, at 1.
[11] JACK HADLEY ET AL., KAISER COMM'N ON MEDICAID & THE UNINSURED, KEY FACTS ABOUT COVERING THE UNINSURED IN 2008: CURRENT COSTS, SOURCES OF PAYMENT, AND INCREMENTAL COSTS 1 (2008), *available at* http://kff.org/uninsured/upload/7810.pdf.
[12] *Id.*

unaffordable medical care, the uninsured indirectly cost the U.S. economy an estimated $100 to $200 billion in 2006.[13]

Direct costs are also high. The uninsured pay for approximately $30 billion of the care they receive, while government programs and other sources of charitable care pay $56 billion.[14] An additional $5.1 billion aimed toward reimbursing hospitals for uncompensated care (care not paid for by an individual or an insurer)[15] is "misallocated to hospitals that provide little care to the uninsured."[16] Some health care providers may further offset uncompensated care by charging insured patients higher rates.[17] However, this effect is minimal, with private insurance premiums estimated to be only 1.7% higher as a result of this cost-shifting.[18]

In addition, many non-profit hospitals receive tax benefits that are grossly disproportionate to the amount of charity care actually provided.[19] For instance, Minnesota hospitals provided only $80 million in charitable care in 2005, while receiving tax-benefits totaling $482 million.[20] The total value of tax exemptions given to non-profit hospitals in exchange for providing charity care reached approximately $10 billion in 2006;[21] a recent IRS report, however, found that uncompensated care only accounted for 56% of the "community benefit" reported by non-profit hospitals claiming a tax-exemption.[22] Further, this care was unevenly distributed among hospitals, with 14% of hospitals providing 63% of the

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[13] *Id.*
[14] Jack Hadley et al., *Covering the Uninsured in 2008: Current Costs, Sources of Payment, and Incremental Costs*, 27 HEALTH AFF. (WEB EXCLUSIVE) w399, w411 (2008).
[15] *Id.* at w405.
[16] *Id.*
[17] *Id.* at w406.
[18] *Id.*
[19] John D. Colombo, *Federal and State Tax Exemption Policy, Medical Debt and Healthcare for the Poor*, 51 ST. LOUIS U. L.J. 433, 449 (2007).
[20] Anna Wolke, *Community Benefit and Tax Exemption Come Under the Microscope*, ST. HEALTH NOTES (Nat'l Conference of State Legislatures/Forum for State Health Policy Leadership, Wash., D.C.), Jan. 7, 2008, at 1, *available at* http://www.ncsl.org/print/health/shn/shn506.pdf.
[21] Colombo, *supra* note 19, at 450.
[22] INTERNAL REVENUE SERV., IRS EXEMPT ORGANIZATIONS HOSPITAL STUDY: EXECUTIVE SUMMARY OF FINAL REPORT 2 (2009), *available at* http://www.irs.gov/pub/irs-tege/execsum_hospprojrept.pdf.

uncompensated care to the uninsured.[23] Much of the federal funding that is already being spent could be used far more efficiently by reallocating funds to finance insurance for all Americans.[24] Expanding full-year coverage to all uninsured Americans would cost an estimated $122.6 billion.[25] This means that providing universal coverage would increase total health care spending by only 5.1%, a lower figure than the annual increase in health care spending (7.6%).[26]

II. HEALTH CARE INITIATIVES PASSED IN RECENT LEGISLATION

In February 2009, sizeable investments in healthcare were made when the Children's Health Insurance Program Reauthorization Act of 2009[27] (CHIPRA) and the American Recovery and Reinvestment Act of 2009[28] (ARRA) were signed into law. CHIPRA invests $33 billion over the next four and one-half years to expand eligibility and simplify enrolment in the State Children's Health Insurance Program (previously known as SCHIP, now known as CHIP).[29] Prior to this legislation, Medicaid and SCHIP provided coverage to one fourth of all children in America (29 million children under Medicaid and 7 million children under SCHIP).[30] The new expanded CHIP program extends coverage to 4.1 million of the 9 million remaining uninsured low-income children in America.[31]

Unlike CHIPRA, the initiatives passed in the ARRA do not expand coverage for uninsured Americans.[32] Rather, ARRA creates temporary solutions aimed at preventing increases in the number of uninsured Americans, and long

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[23] *Id.* at 3.
[24] Hadley et al., *supra* note 14, at 412-413.
[25] *Id.* at w411.
[26] *Id.*
[27] Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3 (2009) (to be codified at 42 U.S.C. §1396 et.seq.).
[28] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009).
[29] KAISER COMM'N ON MEDICAID & THE UNINSURED, KEY FACTS, CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009 (CHIPRA) 1 (2009), *available at* http://www.kff.org/medicaid/upload/7863.pdf.
[30] *Id.*
[31] *Id.*
[32] KAISER COMM'N ON MEDICAID & THE UNINSURED, AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA): MEDICAID AND HEALTH CARE PROVISIONS 2 (2009) [hereinafter KAISER, AMERICAN RECOVERY ACT], *available at* http://kff.org/medicaid/upload/7872.pdf.

term investments aimed at reducing health care costs over time.[33] Though ARRA's provisions may slow the increase in uninsured Americans and may reduce the long-term costs of health care, they are not a substitute for comprehensive health care reform.[34]

A. Temporary Increases in FMAP and Subsidies for COBRA

The ARRA includes $86.6 billion in temporary relief[35] to combat a collective $350 to $370 billion state budget shortfall projected over the next three fiscal years.[36] This temporary relief funds the federal portion of joint Federal-State Medicaid programs by increasing the Federal Medical Assistance Percentage (FMAP) in States burdened by high unemployment and, consequentially, high Medicaid enrollment.[37] A 1% increase in unemployment increases Medicaid and SCHIP enrollment by 1.1 million and increases costs by $3.4 billion.[38] Thus, the additional funding is critical, since the combination of high unemployment rates with budget shortfalls have strained existing Medicaid programs and forced states to cut benefits[39] to meet budget requirements. States with an increase in unemployment of at least 1.5% over a three month period since January 1, 2006 qualify for the temporary increase in their FMAP.[40] However, in order to receive federal funding, states must restore Medicaid funding to July 1, 2008 levels, and are prohibited from making additional cuts to Medicaid funding.[41] Also, states

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[33] KAISER, AMERICAN RECOVERY ACT, *supra* note 32, at 2.
[34] *Id*.
[35] *Id.*
[36] KAISER COMM'N ON MEDICAID & THE UNINSURED, RISING UNEMPLOYMENT MEDICAID AND THE UNINSURED: A MULTI-YEAR SNAPSHOT OF STATE FINANCING EFFECTS 1 (2009), *available at* http://www.kff.org/uninsured/upload/7850_FS.pdf.
[37] KAISER, AMERICAN RECOVERY ACT, *supra* note 32, at 1.
[38] KAISER COMM'N ON MEDICAID & THE UNINSURED, MEDICAID, SCHIP, AND ECONOMIC DOWNTURN: POLICY CHALLENGES AND POLICY RESPONSES (EXECUTIVE SUMMARY) 5 (2008) [hereinafter KAISER, POLICY CHALLENGES], *available at* http://www.kff.org.
[39] Amy Goldstein, *States Cut Medicaid Coverage Further*, WASH. POST, Dec. 26, 2008, at A1; Jane Zhang, *States Take Aim at Medicaid*, WALL ST. J., Jan. 28, 2009, *available at*: http://online.wsj.com/article/SB123311516946923241.html.
[40] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, §5001(c) (2009).
[41] *Id.*

must meet prompt payment requirements to receive increased Federal funds.[42] These payment requirements may prove problematic for states such as Illinois, which owes providers for a huge backlog of Medicaid payments.[43]

Though increased Medicaid enrollment strains state budgets, cutting Medicaid funds in a faltering economy tends to worsen economic downturns by preventing Medicaid from acting as a buffer that can automatically stimulate a weakening economy.[44] Medicaid is the second largest item in states' budgets and brings more federal dollars into states than any other budget item.[45] Medicaid payments not only support health care services and providers, but also provide indirect support to vendors and suppliers of health care firms.[46] These outside federal funds generate billions in economic activity within states and support tens of thousands of jobs.[47]

In response to the economic downturn of 2003 to 2004, Congress passed the Jobs and Growth Tax Relief Reconciliation Act, another temporary solution, which provided an extra $20 billion to state Medicaid programs and prevented states from reducing Medicaid benefits.[48] While this act had positive results,[49] it is inefficient to enact new emergency legislation for state Medicaid programs with each recession because such legislation often comes too late.[50] A long-term, pro-active solution to this problem is to permanently alter the FMAP formula so that

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[42] *Id*. at §5001(f)(2).
[43] Steve Stanek, Illinois Bill Payment Backlog 'Potentially Catastrophic', Budget & Tax News, Feb. 2009, available at http://www.heartland.org/publications/budget%20tax/article/24477 Illinois_Bill_Payment_Backlog_Potentially_Catastrophic.html.
44 Kaiser, Policy Challenges, supra note 38, at 5-6.
[45] KAISER COMM'N ON MEDICAID & THE UNINSURED, THE ROLE OF MEDICAID IN STATE ECONOMIES: A LOOK AT THE RESEARCH 1 (2009), *available at* http://www.kff.org/medicaid/upload/7075_02.pdf.
[46] *Id*.
[47] *Id*.
[48] KAISER, POLICY CHALLENGES, *supra* note 38, at 6.
[49] *Id.* at 6.
[50] Vic Miller, *Stabilizing Medicaid Financing During Economic Downturns*, CTR. FOR CHILDREN & FAMILIES, GEORGETOWN UNIV. HEALTH POLICY INST., POLICY PAPER NO. 2, at 1 (2007), *available at* http://ccf.georgetown.edu/index/cms-filesystem-action?file=ccf%20publications/federal%20medicaid%20policy/stabilizing%20medicaid.pdf.

federal funding is based on a state's unemployment level[51] instead of on a state's per capita income.[52]

The second largest health care investment included in the ARRA is a $24.7 billion dollar plan to subsidize Consolidated Omnibus Budget Reconciliation Act (COBRA) insurance coverage for recently unemployed workers.[53] Two-thirds of workers, should they lose their jobs, are eligible to extend their employer-subsidized insurance through COBRA at an unsubsidized rate.[54] However, 91% of eligible unemployed Americans cannot afford COBRA premiums.[55] Thus, without subsidies, the unemployed join the ranks of the uninsured, and, for many uninsured Americans, an illness or injury can lead to financial ruin.[56] Under the ARRA, workers laid-off between September 1, 2008 and December 31, 2009 can receive a 65% subsidy for COBRA premiums for up to nine months.[57] However, this may be insufficient, as it is estimated that a subsidy would need to cover approximately 75% to 85% of premiums in order to equal the costs borne by workers under an employee-sponsored plan.[58] As with FMAP, the COBRA provision in the ARRA is merely a temporary solution,[59] a response to this economic crisis; it is not a long-term solution for unemployed Americans who lose their employer-based insurance along with their jobs.

B. Long-Term Investments to Reduce Costs

The ARRA also invests in long-term initiatives designed to reduce future health care costs.[60] Specifically, the bill includes $19.2 billion in funding for

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[51] *Id.* at 3.
[52] KAISER, AMERICAN RECOVERY ACT, *supra* note 32, at 1.
[53] *Id.*
[54] MICHELLE M. DOTY ET AL., COMMONWEALTH FUND, MAINTAINING HEALTH INSURANCE DURING A RECESSION: LIKELY COBRA ELIGIBILITY 1 (2009).
[55] *Id.*
[56] LESLIE E. LINFIELD, INST. FOR FIN. LITERACY, WHO WENT BANKRUPT IN 2006? A DEMOGRAPHIC ANALYSIS OF AMERICAN DEBTORS, 21 (2007).
[57] KAISER, AMERICAN RECOVERY ACT, *supra* note 32, at 2.
[58] DOTY ET AL., *supra* note 54, at 1.
[59] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 §3001(b)(c)(3) (2009).
[60] KAISER, AMERICAN RECOVERY ACT, *supra* note 32, at 1-3.

health information technology (health IT).[61] Under the ARRA the government is required to establish an Office of the National Coordinator for Health Information Technology.[62] This Health IT Office is charged with setting standards and policies for health IT, [63] distributing grants and funding for the establishment of health IT,[64] and meeting the goal of providing every American with an electronic health record by 2014.[65] The ARRA also strengthens privacy laws related to the protection of personal information in health IT.[66] However, ARRA does not explicitly state what these new standards are.

In a controversial provision, ARRA invests $1.1 billion in "comparative effectiveness" research.[67] This research focuses on reducing costs by prescribing only the most effective treatments.[68] However, the pharmaceutical industry strongly opposes this research.[69] Further, cost savings are difficult to predict and it may take ten years before any cost reductions are realized as a result of this research.[70]

III. CONCLUSION

Though substantial investments in health care have already been made in CHIPRA and the ARRA, these efforts are not a substitute for comprehensive health care reform. It is not yet clear what shape health care reform will take, and the proposed plans could take the country in radically different directions.[71]

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[61] *Id.*
[62] American Recovery and Reinvestment Act §3001(b)(c)(3)).
[63] *Id*.
[64] *Id*. at §3001.
[65] *Id*. at §3001(C)(6)(E).
[66] *Id*. at §§ 13401-24.
[67] KAISER, AMERICAN RECOVERY ACT, *supra* note 33.
[68] CONG. BUDGET OFFICE, RESEARCH ON THE COMPARATIVE EFFECTIVENESS OF MEDICAL TREATMENTS 29 (2007).
[69] Alicia Mundy, *Drug Makers Fight Stimulus Provision*, WALL ST. J., Feb. 9, 2009, *available at http://online.wsj.com/article/SB123423024203966081.html.*
[70] CONG. BUDGET OFFICE, *supra* note 68, at 30.
[71] *Compare,* Healthy Americans Act, S. 391, 11th Cong. (2009) (a bipartisan bill that would eliminate tax exemptions for employer-sponsored health plans and mandate that individuals purchase insurance through national or regional pools) *and* Robert Pear & Sheryl Gay Stolberg, *Obama Says He is Open to Altering Health Plan,* N. Y. TIMES, Mar. 5, 2009 (describing Obama's

While any plan for reform comes at a high cost, such an investment would bring about innumerable benefits for millions of Americans. Through a patchwork of programs, billions[72] are already being spent each year to offset uncompensated care provided to over 45 million[73] uninsured Americans, and a good portion of these funds could be redirected to help fund a plan to provide health care for all Americans. Even amidst this recession, Americans cannot afford to ignore the health care crisis. As the number of uninsured rises with the number of unemployed, the need for action on these issues becomes even more urgent.

willingness to compromise on his plan to offer a national health plan alongside private insurance plans in a national health exchange, so long as eight key principles are met), *with* Jay Newton-Small, *Bipartisan Senate Group Makes Health Care Progress*, TIME, Mar. 13, 2009 (describing the efforts of a bipartisan group of senators known as "the gang of nine" to reach consensus on a health care reform bill).

[72] Hadley et al., *supra* note 14, at w411.

[73] FIVE BASIC FACTS, *supra* note 7, at 1.