

**HR**

**14**

# Alaska State Legislature

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## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

### SPONSOR STATEMENT

#### **HOUSE RESOLUTION 14:** *Urging the United States Congress to oppose federal health care reform bills.*

House Resolution 14 requests the Alaska Congressional delegation to vote against current health care reform bills and to develop health care reform that is affordable and accessible to all legal residents. It also requests the Governor to review the constitutionality of the Nebraska Compromise that guaranteed Nebraskans would receive a break to pay for expanded access to Medicaid benefits. This exemption was granted in order to obtain Senator Ben Nelson's vote in order to get the 60 votes needed to send the health care reform legislation to the Senate floor. Vermont, Florida and Louisiana also received special deals in order to get Senators' votes to reach the 60 vote threshold.

As noted in the letter from the Republican Governors Association (RGA), "health care reform should be about fixing our broken Medicaid and Medicare systems; instead, the current health care bills entitle 15-20 million more people to Medicaid....the unfunded mandate to states and territories is \$25 billion."

Also noted by the RGA was the fact that the health care reform bills "impose a one-size fits all federally-designed health insurance exchange." Alaska, as well as the other states, needs the flexibility to design and operate mechanisms to purchase insurance. Alaska and the rest of the states will face increased health care entitlement costs every year if this legislation passes.

The proposed health care reform legislation is also opposed by small businesses around the state and country. NFIB/Alaska states "it fails to address fundamental small business priorities. It does not make health insurance more accessible or affordable to small businesses....this legislation actually increases the overall costs of doing business for small businesses."

A RESOLUTION

1 Urging the Attorney General of Georgia to begin preparations to challenge the  
2 constitutionality of H.R. 3590, the federal "Patient Protection and Affordable Care Act"; and  
3 for other purposes.

4 WHEREAS, recently, the United States Senate passed H.R. 3590, the "Patient Protection and  
5 Affordable Care Act"; and

6 WHEREAS, H.R. 3590 expands citizens' eligibility to receive Medicaid services if they earn  
7 less than 133 percent of the federal poverty level; and

8 WHEREAS, in Georgia alone, this expansion of Medicaid is estimated by the Georgia Senate  
9 Budget Office to add \$1 billion to state health care entitlement costs every year; and

10 WHEREAS, the impact of H.R. 3590 on Georgians is enormously costly and could be a risk  
11 to maintaining many essential state programs; and

12 WHEREAS, in order to obtain the 60 votes required to send the legislation to the Senate  
13 floor for a vote and final passage, the United States Senate leadership included an  
14 unprecedented special exemption called the Nebraska Compromise to obtain Senator Ben  
15 Nelson of Nebraska's key 60th vote to pass the bill; and

16 WHEREAS, the Nebraska Compromise guaranteed Nebraskans that they would never have  
17 to pay for their citizens' expanded access to Medicaid benefits included in H.R. 3590; and

18 WHEREAS, the Nebraska Compromise violates the principle that federal legislation must  
19 have a legitimate national interest and cannot benefit any one state over another; and

23 WHEREAS, H.R. 3590 also creates a federal mandate requiring all Americans to participate  
24 in one national health insurance program; and

25 WHEREAS, this unprecedented Congressional mandate threatens our individual liberty and  
26 many legal experts believe that this federal mandate is unconstitutional; and

27 WHEREAS, the members of this body realize that Georgia does not yet have standing to sue  
28 until President Obama signs H.R. 3590 into law; however, in light of the questionable  
29 validity of this legislation and its potential negative effects on the budget of the State of  
30 Georgia, it would be prudent to begin preparations now for a potential legal action  
31 challenging this legislation should it become law by completing the necessary legal research  
32 and preparing to join with what is reported to be at this time over a dozen other states to  
33 challenge the constitutionality of this bill.

34 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE that the members of this body  
35 respectfully request the Attorney General of the State of Georgia to initiate a formal  
36 investigation into the constitutionality of the special exemption set forth in the United States  
37 Senate's version of this national health care legislation and explore the availability of all other  
38 legal challenges that Georgia could pursue to oppose this unconstitutional provision as well  
39 as research the federal mandated health care provisions in H.R. 3590.

40 BE IT FURTHER RESOLVED that the members of this body ask the Attorney General of  
41 Georgia to join with the other state attorneys general who have publicly stated they intend  
42 to investigate and collectively and individually sue to challenge the legality of any national  
43 health care legislation that contains either the Nebraska Compromise or the federal  
44 single-payer mandate.

45 BE IT FURTHER RESOLVED that the members of this body request that the Attorney  
46 General of Georgia report to this body regarding how the Attorney General intends to address  
47 this constitutionally flawed legislation which will financially harm every Georgian and  
48 advise the members of this body when and if the Attorney General intends to sue the federal  
49 government on behalf of the people of this state.





Issues & Research » Health » State Legislation Opposing Certain Health Reforms,

Go 18906

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## State Legislation Opposing Certain Health Reforms, 2009-2010

**Updated: March 11, 2010** - subject to additions

by: Richard Cauchi, Program Director, NCSL Health Program

States have an extensive and complicated shared power relationship with the federal government in regulating various aspects of the health insurance market and in enacting health reforms.

As part of state-based responses to federal health reform legislation, individual members of at least **36 state legislatures** are using the legislative process to seek to limit, alter or oppose selected state or federal actions, including single-payer provisions and mandates that would require purchase of insurance. In general the measures seek to make or keep health insurance optional, and allow people to purchase any type of coverage they may choose. The individual state language varies.

**Constitutional amendments:** In 26 of the states, the proposals include a proposed constitutional amendment by ballot question. In a majority of these states, their constitution includes an additional "hurdle" for passage - requiring either a "supermajority of 60% or 67% for passage, or requiring two affirmative votes in two separate years, such as 2010 and 2011.

**Changing state law:** In 13 states proposed bills would amend state law, not the state constitution. These require a simple majority vote and action by the governor; they also can be re-amended or repealed by a future state law. So far in 2010,

**Virginia** became the first in the nation to enact a new statute section titled, " Health insurance coverage not required." It became law on March 4, 2010; see [SB 283 and related bills](#) below. NEW

A bill in **Utah** has passed both chambers and was enrolled on March 9; another bill in **Idaho** also passed both chambers and was enrolled on March 9. NEW

**Unfunded mandates:** New Hampshire has a bill that would prohibit any Medicaid expansion unless paid for by the federal government or approved by the NH Legislature.

Based on actions initially in Arizona, several states propose or may propose state constitutional amendments, using language such as:

"To preserve the freedom of all residents of the state to provide for their own health care... A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system ... 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..."

[see full text in [Appendix 1](#)]

Arizona voters are scheduled to cast ballots on this constitutional amendment in November 2010. If adopted by voters, it could block future state health reforms and at least raise questions about some features within future federal health reforms.

According to *The New York Times*, "Conservatives and libertarians, mostly, have been advancing the theory lately that the individual mandate, in which the government would compel everyone to buy insurance or pay a penalty, is unconstitutional." (*NY Times*, 9/26/09) A current Massachusetts law, passed in 2006, includes an individual mandate, although it was written to be consistent with both state and federal constitutions. To the extent that congressional proposals provide for state opt-out or opt-in features, these proposals to restrict "reform" could well become more widely discussed.

### Arizona Resolution passed, 2009



### Related NCSL Resources:

[Federal Health Reform](#)

[State Health Reform](#)

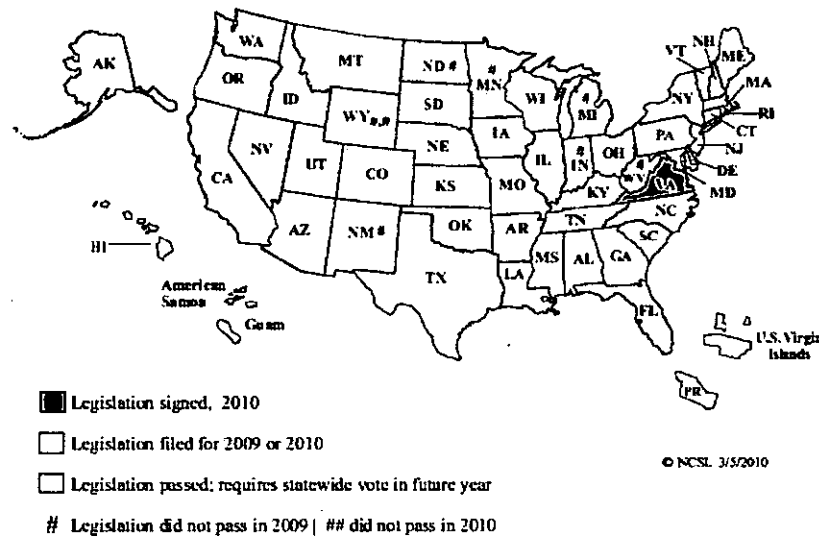
[Podcast audio](#) (11/20/09)

Health Reform: States Opting Out

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**36 States with 2009-2010 Legislation Opposing Certain Health Reforms (map updated 3/5/10)**



As of early March, formal resolutions or bills had been filed in **Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin** and **Wyoming**. Up to three additional states were reported in media or association articles to have discussed future action or intentions; examples are [listed below](#).

**Laws:** On March 4, 2010 a **Virginia** law passed both Senate and House, was amended by the Governor and became law, becoming the first such statute in the nation.\*

**Passed bills:** None of the other proposals listed have been finally approved; **Arizona's** resolution of June 2009 was the first measure to have passed the legislative process; **Idaho** and **Utah** bills have passed their initial chamber. Constitutional resolutions have advanced through initial steps in **Florida** and **Georgia**.

States with discussions but no known legislation are listed separately; information in the examples list below is based on media statements by individual legislators or legislative associations.<sup>[1]</sup>

The issue has garnered state-level interest in part due to the American Legislative Exchange Council's (ALEC) [model](#) "Freedom of Choice in Health Care Act," which was described as "How Your State Can Block Single-Payer and Protect Patients' Rights." The ALEC-endorsed language mirrors Arizona Proposition 101, which was narrowly defeated in 2008.

Several legal experts have expressed opinions on the validity of this approach. [See [Appendix 2](#) for comment and quotes.]

**Table 1:  
Filed Bills and Resolutions for 2009-2010**

Table 1 indicates 1) Activity and status for measures filed;  
2) the percentage of affirmative votes in the legislature required for approval;  
3) the earliest date that a proposed constitutional amendment can appear on the statewide ballot. Timing and parliamentary steps vary among states.

**The Constitutional process:**

In 35 states, the legislature can enact a proposed constitutional amendment during a single session. [Appendix 3] This would allow passed measures to appear on the state ballot in 2010 or later. In 12 states the legislature must enact a proposed constitutional amendment during two sessions, which would make 2012 the earliest date for voter decisions.

STATE	ACTIVITY/LEGISLATION	REQUIRED FOR PASSAGE
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	<p>Joint resolutions would propose a State Constitutional amendment to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permits person or employer to purchase lawful health care services directly from health care provider, and permits health care providers to accept direct payment from a person or employer for lawful health care services.</p> <p><i>(HJR 37 prefiled 7/27/2009 for 2010 session; SJR 72 prefiled 10/5/09; sent to 3 committees 12/9/09; favorable comm. report 3/4/10)</i></p>	<p>chambers + 2010 ballot vote</p>
<p><b>Georgia</b></p>	<p>2010 resolutions: <u>HR 1086</u> by Rep. Calvin Hill; <u>HR 1107</u> by Rep. Mills; <u>SR 794</u> by Sen. Hill; <u>SR 795</u> by Sen. Harp.</p> <p>Would propose an amendment to the Constitution so as to provide that no law or rule or regulation shall compel any person, employer, or health care provider to participate in any health care system and to authorize persons and employers to pay directly for lawful health care services without penalties or fines; would provide for submission of the amendment for ratification or rejection.</p> <p>SR 795 would provide that residents would not be subject to penalties or fine for not having health insurance.</p> <p><i>(Prefiled 11/23/09 for 2010 session; SR 795 favorable report by Senate Judiciary 2/2/10; Senate 2nd Reading 2/3/10)</i>  <i>(SR 794 Senate 2nd reading 2/11/10)</i>  <u>SR 829</u> and <u>SR 830</u> by Sen. Hill.</p> <p>Resolutions would direct the Attorney General to "initiate a formal investigation into the constitutionality of the special exemption set forth in the United States Senate's version of this national health care legislation and explore the availability of all other legal challenges .</p> <p><i>(Filed 1/15/10; Senate Judiciary 2/2/10; Senate 2nd reading 2/11/10)</i></p>	<p>2/3rds both legislative chambers + 2010 ballot vote</p> <p>Resolutions; majority vote</p>
<p><b>Idaho</b> <sup>NEW</sup></p>	<p><u>HB 391</u> by State Affairs Comm.</p> <p>Would amend and add to existing law to establish the Idaho Health Freedom Act, stating in part, "that every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty."</p> <p><i>(Filed 1/19/10; passed House 52y-8n, 2/9/10; amended; passed Senate 24y-10n &amp; enrolled, 3/9/10)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
<p><b>Indiana</b> (2009)</p> <p>Indiana <sup>NEW</sup> (2010)</p>	<p><u>SJR 65</u> by Sen. Waltz; <u>SJR 91</u> by Sen. Waltz; <u>SJR 111</u> by Sen. Waltz (Advisory resolutions for 2009)</p> <p>SJR 91: Resolved, "That the Indiana General Assembly must ensure that all residents of Indiana may enter into private contracts with health care providers for health care services and may purchase private coverage for health care services. That the Indiana General Assembly should not require an individual to participate in a health care system or plan or impose on an individual a penalty or fine of any type for choosing to obtain or decline coverage for health care services or participating in a particular health care system or plan."</p> <p><i>(SR 65 - filed 4/7/09 - did not pass by end of session; SR 91 - filed 4/27/09 - did not pass by end of session; SR 111 - filed 4/28/09 - did not pass by end of session; Indiana does not carry over bills or resolutions to 2010)</i></p> <p><u>SJR 14</u> by Sen. Krause, <u>HR 6</u>; also non binding resolution <u>SCR 10</u></p> <p>Would propose a state constitutional amendment stating, "A person, an employer, or a health care provider shall not be compelled, directly or indirectly, to participate in any health care system. A person or an employer may pay directly for lawful health care services and shall not be subject to penalties or fines for paying directly for lawful health care services. A health care provider may receive direct payment for health care services from a person or an employer and shall not be subject to penalties or fines for accepting direct payment from a person or an employer."</p> <p><i>(Filed 1/11/10)</i></p>	<p>Non-binding resolutions</p> <p>50% both legislative chambers + 2012 ballot vote</p>

<b>Iowa</b> <small>NEW</small>	<p><u>HJR 2007</u> by Rep. Upmeyer Would propose a state constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system. <i>(Filed for 2010 session)</i></p>	50% both legislative chambers + 2012 ballot vote
	<p><u>HF 2214</u> by Rep. Upmeyer Would establish by statute that the people of Iowa have the right to enter into contracts with health care providers for health care services and to purchase private health care coverage. In addition, the general assembly cannot require any person to participate in any health care system or plan, or impose any type of penalty or fine on any person for choosing to obtain or declining to obtain health care coverage or for participating or declining to participate in any particular health care system or plan. <i>(Filed 1/26/10; motion to expedite failed 44y-53n, 2/12/10; pending in committee)</i></p>	Proposed statute: majority both legislative chambers
<b>Kansas</b> <small>NEW</small>	<p><u>SCR 1626</u> by Sen. Pilcher-Cook Would propose a state constitutional amendment providing that "A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system or purchase health insurance." (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. <i>(Filed &amp; sent to committees 2/2/10, 2/17/10)</i></p>	2/3rds both legislative chambers + 2010 ballot vote
<b>Kentucky</b> <small>NEW</small>	<p><u>HB 307</u> by Rep Moore Would prohibit by statute any other law "from requiring any individual to participate in any health care system or plan, or to impose a penalty or fine regarding participation; permit an individual or an employer to pay directly for health care services and a health care provider to accept direct payment without penalties or fines. Also would prohibit the state executive branch from "participating in or complying with any federal law, regulation, or policy that would compromise the freedom of choice in the health care." <i>(Filed 1/21/10; sent to Banking &amp; Insurance Comm. 1/26/10)</i></p>	Proposed statute: majority both legislative chambers
<b>Louisiana</b> <small>NEW</small>	<p><u>SB ___</u> by Sen. Crowe Would prohibit by statute any other law requiring a "person, employer, health care provider to participate" in a health system or insurance system; also would prohibit compelling participation in any health care system or health insurance plan. Would establish a misdemeanor offense and penalty (\$500 or five day in prison) for any state or local official who "attempts to coerce any individual to purchase health insurance." <i>(Measure drafted; to be filed for 2010 session) SA</i></p>	Proposed statute: majority both legislative chambers
<b>Maryland</b> <small>NEW</small>	<p><u>SB 397</u> by Sen. Pitkin Would propose a state constitutional amendment limiting the regulation of health care in the state; prohibiting a law from compelling residents to participate in any health care system; prohibiting residents from being required to pay penalties or fines for not participating in health insurance; specifying that the purchase or sale of specified health insurance may not be prohibited by law; authorizing residents to pay directly or accept direct payment for specified health care services. <i>(Filed and sent to committee 1/29/10)</i></p>	60% both legislative chambers + 2010 ballot vote
<b>Michigan</b>	<p><u>SJR K</u> of 2009 by Sen. Kuipers; <u>HJR CC</u> by Rep. Calley; <u>HJR Z</u> of 2009 by Rep. Amash Would propose a state constitutional amendment "to affirm the right to independent health care." Includes a statement that "a person or employer shall not be required to pay penalties or fines for paying directly for lawful health care services." <i>(Filed 8/1/9/09, 8/29/09 and 9/9/09; pending in Committee on Health Policy; no floor vote in 2009; carried over to 2010)</i></p>	2/3 both legislative chambers + 2010 ballot vote

<b>Minnesota</b>	<p>HF 171 by Rep. Emmer, S_325 by Sen. Koch, S_1282 by Sen. Hann          Would propose an amendment to the Minnesota Constitution stating that "no law shall be passed that restricts a person's freedom of choice of private health care systems or private health plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or health plan."  <i>(Filed 1/22/09, 3/9/09; did not pass committee by end of 2009 session; subject to carryover to 2010)</i></p>	50% both legislative chambers + 2010 ballot vote
<b>Mississippi</b> <small>NEW</small>	<p>HCR 17 by Rep. Monsour          Resolution, would propose a constitutional amendment to prohibit laws compelling any person, employer or health care provider to participate in any health care plan. Would provide that 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."  <i>(Filed; sent to Committee on Constitution 1/7/10)</i></p>	2/3 both legislative chambers + 2010 ballot vote
<b>Missouri</b> <small>NEW</small>	<p>HJR 48 by Rep. Davis; HJR 50 by Rep. Ervin; HJR 57 by Rep. Jones Ti; SJR 25 by Sen. Cunningham          Joint resolutions, would propose a constitutional amendment which would prohibit compelling a person to participate in any health care system. "Upon voter approval, this proposed constitutional amendment prohibits any person, employer, or health care provider from being compelled to participate in any health care system. Individuals and employers may pay directly for lawful health care services, and health care providers can accept payment for health care services from individuals or employers without being subject to fines or penalties. The purchase or sale of health insurance in private health care systems cannot be prohibited by law or rule.  <i>(Prefiled 12/1/09 , 12/4/09 &amp; 1/6/10 for 2010 session) 4, 10</i></p>	50% both legislative chambers + 2010 ballot vote
<b>Nebraska</b> <small>NEW</small>	<p>LR 289CA by Sen. McCoy          Proposed constitutional amendment stating "no law shall be passed that: (1) Restricts a person's freedom of choice of private health care systems or private health plans of any type; (2) Interferes with a person's or an entity's right to pay directly for lawful medical services; or (3) Imposes a penalty or fine of any type for choosing to obtain or decline health care coverage."  <i>(Filed &amp; sent to Health &amp; Human Services Committee 1/13/10)</i></p>	60% both legislative chambers + 2010 ballot vote
<b>New Hampshire</b> <small>NEW</small>	<p>CACR 30 of 2010 by Rep. Renzullo          Would propose a state constitutional amendment to establish a right stating, "People may enter into private contracts with health care providers for health care services and to purchase health care coverage." Also would prohibit the state legislature from requiring health insurance or imposing any fine or penalty for not having coverage.  <i>(Filed 1/6/10; negative report; did not pass as "inexpedient to legislate" 2/3/10)</i></p>	60% both legislative chambers + 2010 ballot vote with 2/3rds popular vote
	Also see <b>Financing</b> category below	--
<b>New Jersey</b> <small>NEW</small>	<p>ACR 109 by Assemblymember Mchose; SCR 81 by Sen. Doherty          Would propose a state constitutional amendment to prohibit state or federal law or regulation from compelling a person to obtain, provide, or participate in health care coverage.          (New Jersey 's constitution requires a three-fifths vote in each chamber at one session [2010], or majority vote in each chamber for two successive sessions [for 2012])          (Filed 2/25/10)</p>	Both legislative chambers + ballot vote (see note)
<b>New Mexico</b>	<p>SJR 1 of 2009 by Sen. Sharer/ HJR 10 of 2009 by Rep. Gardner          Proposed constitutional amendment stating, "No law shall be enacted that: A. restricts a person's freedom of choice of a private health care system or plan; B. interferes with a person's right to pay directly for lawful medical services; or C. imposes a penalty or fine of any type on a person for choosing</p>	50% both legislative chambers + 2010 ballot vote

	to obtain or to decline health care coverage or for participation in a particular health care system or plan."   <u>Fiscal Impact Report</u> (SJR 1 filed 1/21/09; HJR 10 filed 1/28/09; failed to pass by end of session; no carryover)	
<b>North Dakota</b>	<u>HCR 3010</u> by Rep. Kasper (Joint Resolution), a proposed 2010 constitutional amendment based on Arizona language. Would propose an amendment to the State Constitution; relates to freedom of choice in health care; prohibits laws that restrict an individual's choice of private health care systems or private plans, interfere with a person's right to pay for lawful medical services, or impose a penalty or fine for choosing to obtain or decline health care coverage or for participation in any health care system or plan." (Filed 1/14/09, failed to pass House 3/4/09 by end of 2009 session; no regular session in 2010)	50% both legislative chambers + future year ballot vote
<b>Ohio</b>	<u>SJR 2</u> of 2009 by Sen. Coughlin; <u>SJR 7</u> by Sen. Grendell; <u>HJR 3</u> by Rep. Maag Joint resolutions for a proposed constitutional amendment to state, " The people of Ohio have the right to enter into contracts with health care providers ... and to purchase private health care coverage" Would prohibit state laws requiring coverage or imposing fines. For "obtaining or declining" coverage. (SJR 2 filed 2/24/09; pending in Senate committee as of 10/29/09) (SJR 7 filed 9/29/09; sent to Senate Insurance, Commerce Comm.) (HJR 3 filed 8/26/09; sent to Insurance Comm. 9/15/09; no floor votes in 2009; carried over to 2010)	60% both legislative chambers + 2010 ballot vote
<b>Oklahoma</b> <small>NEW</small>	<u>HJR 1054</u> by Rep. Ritze Joint resolution for a proposed constitutional amendment stating, "A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system; and A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines" for lack of insurance. (Filed 12/22/09; sent to Rules Comm. 2/2/10)	50% both legislative chambers + 2010 ballot vote
<b>Pennsylvania</b>	<u>HB 2053</u> by Rep. Baker Proposed statute "providing for the rights of individuals to purchase private health care insurance and prohibiting certain governmental action." States, "The people shall have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The legislature may not require any individual to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." (Filed and sent to Insurance Committee, 10/21/09; no floor vote in 2009; carried over to 2010)	Proposed statute: majority both legislative chambers
<b>South Carolina</b>	<u>HJR 4181</u> by Rep. Scott; <u>SJR 980</u> by Sen. Bright; <u>SJR 1010</u> by Sen. Rose. Resolution for a proposed constitutional amendment, "prohibiting any law, regulation, or rule to compel an individual, employer, or health care provider to participate in a health care system, by allowing individuals and employers to pay directly for lawful health care services without penalties or fines for these direct payments, by providing that the purchase or sale of health insurance in private health care systems must not be prohibited by law, regulation, or rule." The resolution title states, "... to preempt any federal law or rule that restricts a person's choice of private health care providers or the right to pay for medical services." (HJR 4181 filed for 2010 session; sent to Committee on Labor, Commerce and Industry, 11/17/09) (SJR 980 and SJR 1010 filed; sent to Senate Judiciary Committee 1/12/10)	50% both legislative chambers + 2012 ballot vote
<b>South Dakota</b> <small>NEW</small>	<u>HJR 1001</u> by Rep. Jensen Resolution for a proposed constitutional amendment, stating "The Legislature may not enact a law that restricts an individual's freedom of choice of private	50% both legislative chambers

	health care systems or private plans of any type; a law that interferes with a person's right to pay directly for lawful medical services; or a law that imposes a penalty or fine of any type for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." <i>(Filed 1/28/10; sent to committees 2/10/10)</i>	+ 2010 ballot vote
<b>Tennessee</b> <small>NEW</small>	<b>SB 2490</b> by Sen. Black; <b>HB 2622</b> by Rep. Lynn Would amend state law by adding a "Tennessee Freedom of Choice in Health Care Act." <i>(Filed for 2010 session)</i>	Proposed statute: majority both legislative chambers
<b>Utah</b> <small>NEW</small>	<b>H 67</b> for 2010 session by Rep. Wimmer Would amend provisions related to the state's strategic plan for health system reform to respond to federal reform efforts; prohibits a state agency or department from implementing any provision of the federal health care reform without first reporting to the Legislature: whether the federal act compels the state to adopt the particular federal provision; consequences to the state if the state refuses to adopt the particular federal provision; and impact to the citizens of the state if reform efforts are implemented or not implemented; would require any agency of the state not to implement any part of federal health care reform passed by the US Congress after March 1, 2010, unless the department or agency reports to the Legislature and the Legislature passes legislation "specifically authorizing the state's compliance or participation in, federal health care reform." <i>(Prefiled 12/23/2009; passed House amended, 53y-20n, 2/11/10; passed Senate 22y-7n; enrolled 3/9/10) News articles 4, 7</i>	Proposed statute: majority both legislative chambers
<b>Virginia</b> <small>NEW</small>	<b>HJ 7</b> by Del. Marshall Resolution for a proposed constitutional amendment, to protect "an individual's right and power to participate or to decline to participate in a health care system or plan; prohibiting any law that will infringe on an individual's right to pay for lawful medical services and prohibiting the adoption of any law that imposes a penalty, tax, or fine upon an individual who declines to enter into a contract for health care coverage or to participate in a health care system or plan. <i>(Filed for 2010 and sent to committee 12/9/09) [Also see bills below]</i>	50% both legislative chambers + 2012 ballot vote
	<b>SB 283</b> by Sen. Quayle; <b>SB 311</b> by Sen. Martin; <b>SB 417</b> by Sen. Holtzman Vogel; <b>HB 10</b> by Del. Marshall. Amends state law by adding a section, "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." It does not apply to Medicaid and CHIP coverage. <i>(Filed for 2010 session 1/13/10; SB 283, SB 311 and SB 417 passed Senate 23y-17n, 2/1/10; passed House 67y-29n, 2/12/10; sent to governor; became law 3/4/10) <small>NEW</small></i> * Under Virginia law, the Governor exercised his option to return the bill to the legislature with a formal recommended amendment. Both branches of the legislature voted to accept the Governor's recommendation, at which point the bills became law without requiring the Governor's signature. <i>[news articles: VA 2/10/2010; Boston Globe 3/8/2010]</i>	Proposed statute: majority both legislative chambers
<b>Washington</b>	<b>HB 2669</b> by Rep. Hinkle Would amend state law by adding a provision that the state "shall not directly or indirectly compel any person, employer, or health care provider to participate in any health care system." and that " A person or employer may	Proposed statute: majority both

	pay directly for lawful health care services and shall not be required to pay any penalty, fine, or other sanction for paying directly for lawful health care services. <i>(Filed &amp; sent to Health &amp; Wellness Comm. 1/12/2010)</i>	legislative chambers
<b>West Virginia</b>	<b>H 3002</b> by Rep. J. Miller The "Health Care Freedom Act" states, "The people have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The Legislature may not require any person to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." <i>(Filed 3/9/09; failed to pass by end of session; cannot carry over to 2010)</i>	Proposed statute: majority both legislative chambers (Did not pass)
West Virginia (2010) <small>NEW</small>	<b>HJR 103</b> by Rep. J. Miller A proposed 2010 Constitutional amendment prohibiting compulsory purchases in healthcare and providing choice and in payment for health services. <i>(Filed 2/5/10; motion to discharge postponed 2/25/10)</i>	Vote in both legislative chambers + 2010 ballot vote
<b>Wisconsin</b> <small>NEW</small>	<b>SJR 62</b> by Sen. Leibham A proposed 2012 Constitutional amendment <i>(Filed 2/22/10) [L. 3, 5]</i>	50% both legislative chambers + 2012 ballot vote
<b>Wyoming</b> (2009)	<b>SJR 3</b> , by Sen. Pres. Hines A proposed 2010 Constitutional amendment based on Arizona language, "that protects individuals, employers and health care providers from having to participate in any health care system." Provides for "freedom of choice in health care; prohibits laws interfering with freedom of choice in health care" <i>(Filed 1/20/09; died in Senate committee 3/3/09; no carryover)</i>	2/3 both legislative chambers + 2010 ballot vote
Wyoming <small>NEW</small> (2010)	<b>SJ 1</b> by Sen. Pres. Hines; <b>HJ 12</b> by Rep. Lubnau Resolution for a proposed 2010 constitutional amendment for "Health freedom of choice," stating, "the federal government shall not interfere with an individual's health care decisions." Also would call for "prohibiting any penalty, fine or tax imposed because of a decision to participate in or decline health insurance, or to pay directly or receive payment directly for health care services." <i>(Filed 1/26/10; did not pass introduction 18y-12n, 2/9/10; HJ 12 did not pass introduction 38y-19n, 2/10/2010) [news article]</i> <b>SB 49</b> by Sen. Jennings Resolution would direct the attorney general to investigate the state and federal constitutional effects of federal health care or health insurance reform legislation; requiring a report within 60 days of any future federal enactment; providing for the attorney general to seek legal remedies. <i>(Filed 2/3/10; did not pass introduction, 18y-12n, 2/9/10)</i>	2/3 both legislative chambers + 2010 ballot vote  Proposed statute; 2/3 required for consideration in budget session

**States Opposing Health Reform Financing and Unfunded Mandates**

State	Activity/Legislation	Required for Passage
<b>New Hampshire</b> <small>NEW</small>	<b>SB 417</b> by Sen. Bradley Would amend state law to prohibit the expansion of the Medicaid program if Congress passes a national health insurance plan unless the expansion is approved by the NH Legislature or is paid for by the federal government. <i>(Filed and sent to Senate Finance Committee 1/6/10; did not pass; voted as "inexpedient to legislate", 14y-10n, 3/3/10)</i>	Proposed statute: majority both legislative chambers

Sources: NCSL research; StateNet

**Table 2****Examples of states with reported interest or pre-legislative steps toward a proposed constitutional amendment or statute.**

No formally filed legislation was reported in these three states as of February, 2010. NCSL provides links or references to third-party articles and information as a convenience. NCSL is not responsible for the accuracy or completeness of such material. Local news and opinion sources are listed as background only.

**Montana** <sup>5</sup> (next regular session in 2011)  
**Rhode Island** <sup>5</sup> [updated 2/12/10]  
**Texas, source** (next regular session in 2011)

Other states have not taken any action in the 2009-2010 session as of February 2010.

**Recent News and Articles**

"[Health Lobby Takes Fight to the States](#)" New York Times, 12/29/2009. <http://www.nytimes.com/2009/12/29/health/policy/29lobby.html>

"[Florida attorney general: healthcare reform unconstitutional?](#)" CS Monitor, 12/30/2009.

"[Some foes of health-care bill hope courts will stop legislation](#)" Washington Post, 1/3/2010.

"[Another Health-Care Obstacle Awaits in States](#)" - article; includes NCSL citation. Wall Street Journal, 1/20/2010.

Virginia "[Bill stating that no one can be forced to buy health insurance advanced.](#)" [The Roanoke Times](#), 1/26/2010.

"[Virginia Closer to Banning Insurance Requirement](#)" - NY Times, 2/2/2010.

"[States Look to Forstall Hypothetical Mandate](#)" - article; includes NCSL citation. NY Times, 2/8/2010

"[Bill to tell feds to back off health care fails in Wyo Senate](#)" - Cowboy State Free Press (WY), 2/9/2010 <sup>NEW</sup>

"[Can the States Nullify Health Care Reform?](#)" - New England Journal of Medicine - 2/10/2010

"[Va. health bill could foil Obama proposal: State questions constitutionality.](#)" - Boston Globe, 3/8/2010 <sup>NEW</sup>

**APPENDIX 1 - The Arizona Proposed Constitutional Amendment**

House Engrossed  
 State of Arizona, House of Representatives  
 Forty-ninth Legislature, First Regular Session, 2009

HOUSE CONCURRENT RESOLUTION 2014

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE XXVII, BY ADDING SECTION 2, CONSTITUTION OF ARIZONA; RELATING TO HEALTH CARE SERVICES.

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

1. Article XXVII, Constitution of Arizona, is proposed to be amended by adding section 2 as follows if approved by the voters and on proclamation of the Governor:

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.

C. This section does not:

1. Affect which health care services a health care provider or hospital is required to perform or provide.
2. Affect which health care services are permitted by law.
3. Prohibit care provided pursuant to article xviii, section 8 of this constitution or any statutes enacted by the legislature relating to worker's compensation.
4. Affect laws or rules in effect as of January 1, 2009.
5. Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services.

D. For the purposes of this section:

1. "compel" includes penalties or fines.
2. "direct payment or pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.
3. "health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants.
4. "lawful health care services" means any health-related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services .
5. "penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government established, created or controlled agency that is used to punish or discourage the exercise of rights protected under this section.

2. The article heading of article XXVII, Constitution of Arizona, is proposed to be changed as follows if approved by the voters and on proclamation of the Governor:

The article heading of article XXVII, Constitution of Arizona, is changed from "REGULATION OF PUBLIC HEALTH, SAFETY AND WELFARE" to "REGULATION OF HEALTH, SAFETY AND WELFARE".

3. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.

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Arizona 2008 History/Action: In 2008, Arizona Proposition 101 appeared on the ballot, referred to by proponents as the "Freedom of Choice in Health Care Act." If it had passed, it would have added the following language to the Arizona Constitution: "Because all people should have the right to make decisions about their health care, no law shall be passed that restricts a person's freedom of choice of private health care systems or private plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." Proposition 101 failed to pass by a vote of 1,048,512 in favor and 1,057,199 opposed, a difference of 8,687 votes. Arizona's Proposition 101 language from 2008 has served as the basis for 2009 legislative language drafted by the American Legislative Exchange Council (ALEC).

Arizona Opinions: ALEC article: "Arizona Poised to Block Single-Payer Health Care"  
[http://www.alec.org/am/pdf/Inside\\_July09.pdf](http://www.alec.org/am/pdf/Inside_July09.pdf)

The 2009 legislative resolution was approved "along party lines." "I certainly would expect it would go to the courts as a states' rights issue," says Bert Coleman, manager of the Arizona campaign. Coleman adds that proponents of the efforts chose to go through the legislative route rather than a much slower citizen petition (as in 2008) process in order to be part of the ongoing discussion over health reform. "We wanted to be part of the debate now," Coleman stated to Inside Health Policy. "Will it influence the debate? I certainly hope so."

## APPENDIX 2: Some Legal and Legislative Opinions on Anti-Reform State Actions

Rep. Nancy Barto, chairwoman of the Arizona House's Health and Human Services Committee, sponsored the bill that led to the ballot referendum. Her basic argument is that "there is no place for government between someone and their doctor," said Becky Blackburn, communications director for the Republican Caucus of the Arizona House of Representatives.

Rep. Linda Upmeyer, Iowa State Representative and the chair of ALEC's Health and Human Services Task Force stated, "Federal health care reform efforts may include a requirement that individuals purchase health insurance, and a so-called 'public option' which will result in less choices for consumers and new government mandates."

Thomas Miller, resident fellow at the American Enterprise Institute, stated that lawsuits are likely to challenge the mandate as an unprecedented violation of inherent individual rights under the U.S. Constitution in enforcing the purchase of a product "with no other reason other than the fact that you are just living in the country. "There's no clear Supreme Court precedent suggesting that this is going to be overturned constitutionally," he said. However, "give me the right five justices and anything's possible. Enforce it in a particularly onerous, all-encompassing, unfair manner and then it's more politically viable for judges to have problems with the way it comes out." [2]

The New York Times cited several legal experts who said "they saw little room for such a challenge:"

Mark A. Hall, professor of law and public health at Wake Forest University, says states don't have the power to override or "opt out" of, or not participate in the mandate. The debate is "a flash in a pan" set off by libertarians who say "Washington, D.C. shouldn't be telling us what to do," he said. "There is no way this challenge will succeed in court," adding that the state measures seemed more "an act of defiance, a form of civil disobedience if you will." [2] Hall has studied the constitutionality of mandates that people buy health insurance, for the O'Neill Institute at Georgetown University.

Timothy Stoltzfus Jost, a health law expert at Washington and Lee University School of Law, concludes that "States can no more nullify a federal law like this than they could nullify the civil rights laws by adopting constitutional amendments." [3, 8]

Randy E. Barnett, a Georgetown law school professor who has written about what he views as legitimate constitutional questions about health insurance mandates, seemed doubtful. "While using federal power to force individuals to buy private insurance raises serious constitutional questions," Professor Barnett said, "I just don't see what these state resolutions add to the constitutional objections to this expansion of federal power." [8]

Ruth Marcus, a legal analyst writing for the Washington Post (November 26, 2009), "Constitution no bar to health reform," seeks to make a detailed case that the latest federal proposals are constitutional. She states,

"Is Congress going through the ordeal of trying to enact health-care reform only to have one of the main pillars -- requiring individuals to obtain insurance -- declared unconstitutional? An interesting debate for a constitutional law seminar. In the real world, not a big worry. ... it's worth explaining where the Constitution grants Congress the authority to impose an individual mandate. There are two short answers: the power to regulate interstate commerce and the power to tax. The (Commerce) clause empowers Congress "to regulate commerce . . . among the several states," which may not sound terribly far-reaching. But since the New Deal, the Supreme Court has interpreted this authority to cover local activities with national implications.

... But the individual mandate is central to the larger effort to reform the insurance market. Congress may not be empowered to order everyone to go shopping to boost the economy. Yet health insurance is so central to health care, and the individual mandate so entwined with the effort to reform the system, that this seems like a different, perhaps unique, case. Congress clearly has authority to, in effect, require employees to purchase health insurance for their old age by imposing a payroll tax to fund Medicare.

The individual mandate is to be administered through the tax code: On their forms, taxpayers will have to submit evidence of adequate insurance or, unless they qualify for a hardship exemption, pay a penalty.

See full text [online](#).

**Sources:** NCSL provides links or references to third-party articles and information as a convenience. NCSL is not responsible for the accuracy or completeness of such material.

[1] American Legislative Exchange Council (ALEC) as quoted in article of August 12, 2009 and NCSL interview with Christie Herrera, ALEC Health Director, August 17, 2009.

[2] Insurance NewsNet: Legal Analysts: "[Suits May Challenge Constitutionality of Individual Mandate in U.S. Health Reform](#)," October 8, 2009.

[3] New York Times "[Health Care Overhaul and Mandatory Coverage Stir State' Rights Claims](#)," September 29, 2009

[4] CNS News.com, a subsidiary of the [Media Research Center](#). "[Nineteen States Move to Defend Individual Health Care Choice](#)," Tuesday, October 27, 2009

[5] Inside ALEC: "[Arizona Poised to Block Single-Payer Health Care](#)." Page 11, July 2009. [ALEC web site](#), accessed 1/31/2010.

[5A] Marsha Shuler, The Advocate, [Baton Rouge]. "[Louisiana state legislator pushing amendment addressing health-care changes](#)." August 11, 2009

[6] Gov. Perry told Dallas talk radio WBAP's Mark Davis; as reported by the Fort Worth Star-Telegram, 7/23/2009

[7] Deseret News, "[Pushing back against feds](#)," August 13, 2009

[8] Politico.com. [Professor Randy Barnett and Professor Timothy Jost: "Healthcare: Is 'mandatory insurance' unconstitutional?"](#) Sept. 18 2009:

[9] Inside ARM. [State Lawmakers Seek Legislative Solutions to Health Care Reform Mandates](#) - September 28, 2009.

[10] News-Leader (Missouri) [Lawmakers: Overhaul a threat to freedom](#). November 15, 2009

[11] Denver Post. [Efforts already underway in Colorado to blunt federal health care reforms](#). December 30, 2009

### APPENDIX 3: Number of Sessions During Which Legislative Enactment Is Required

In the following 35 states, the legislature enacts a proposed constitutional amendment during only one session.

Alabama	Louisiana	North Dakota
Alaska	Maine	Ohio
Arizona	Maryland	Oklahoma
Arkansas	Michigan	Oregon
California	Minnesota	Rhode Island
Colorado	Mississippi	South Dakota
Florida	Missouri	Texas
Georgia	Montana	Utah
Idaho	Nebraska	Washington
Illinois	New Hampshire	West Virginia
Kansas	New Mexico	Wyoming
Kentucky	North Carolina	

In the following 12 states, the legislature must enact a proposed constitutional amendment during two sessions.

Delaware **	Nevada	Tennessee
Indiana	New York	Vermont
Iowa	Pennsylvania	Virginia
Massachusetts	South Carolina	Wisconsin

\*\* Delaware does not require a public vote once a proposed amendment passes two consecutive sessions by a 2/3 vote.

In the following three states, the vote total determines the number of sessions during which a proposed constitutional amendment must be enacted.

Connecticut

New Jersey

Hawaii

Source for Appendix 3: Brenda Erickson, NCSL Legislative Management memorandum, 2009.

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**Related NCSL Resource Pages:** [State Health Reform](#) | [Federal Health Reform](#)

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**Republican Governors: Health Care Bills Omit Reform**

Posted by admin in [Governors](#), [Policy](#) on January 13th, 2010 | 5 Responses

**Join America's Governors - Sign Below**

16  
tweets  
retweet

Name \*

First

Last

Email (Stay updated on the Healthcare Bill) \*

Zip Code

**Sign the Petition**

Twenty Republican governors and governors-elect sent a letter to Congressional leaders today urging them to refocus and pass "meaningful health care reform, not hastily prepared partisan legislation which omits reform and saddles American taxpayers for generations to come."

"Governors of both parties have said for months how bad this bill is for the states and our nation," said RGA Chairman Haley Barbour. "Now is the time for leaders in Congress to finally listen and restart this process so they can get health care reform right."

The governors criticized the lack of transparency in the legislative process and called the current health care bills "a lost opportunity to improve the lives of Americans, create a sustainable system of health care and help stabilize both our state and national economies."

The governors highlighted that the House and Senate bills fail to fix the broken Medicaid and Medicare systems and instead entitle 15-20 million more people to Medicaid. The net result of this

expansion “will be a significant cost shift to those privately insured around the country” and will further damage already hurting state budgets.

They also criticized the inflexibility forced upon states in the current bills. The governors write that the current proposals would eliminate the ability of states to negotiate Medicaid provider rates and force the states into a one-size-fits-all, federally-designed health insurance exchange.

Last, the governors urged Congress to take steps to create a system, which “eliminates red tape, empowers consumers to engage in making good health care decisions in the private market, and guarantees affordable coverage for patients with preexisting conditions.”

Full text of the letter can be found below:

*Dear Senator Reid, Senator McConnell, Speaker Pelosi, and Representative Boehner:*

*As governors, we believe the reform of the health care system can be very beneficial to our nation's economic future and the well-being of our citizens; however, the current health care bills are a lost opportunity to improve the lives of Americans, create a sustainable system of health care and help stabilize both our state and national economies.*

*Health care reform should be about fixing our broken Medicaid and Medicare systems; instead, the current health care bills entitle 15-20 million more people to Medicaid. While providing health care to low income individuals is important, the net result of this entitlement expansion will be a significant cost shift to those privately insured around the country. According to the Congressional Budget Office (CBO), the unfunded mandate to states and territories is \$25 billion; although many states disagree with that figure. For example, Texas costs are estimated to be \$21 billion over ten years.*

*The National Association of State Budget Directors (NASBO) has demonstrated states/territories are in no position to comply with the maintenance of effort provisions found in the bills or to accept any increased costs or additional administrative burdens to expand Medicaid. State general fund expenditures have dropped for the second year in a row. The December 2009 survey shows that the budget situation faced by states truly is unprecedented. Many states cannot afford their current share of the Medicaid program, and they will also have to face a funding cliff whenever the stimulus-enhanced FMAP dollars are exhausted. States have already been forced to cut vital services with 30 states cutting education, 29 states cutting Corrections, and 28 states already cutting Medicaid.*

*Current federal proposals would strip the states of our ability to negotiate Medicaid provider rates, and we believe that states and territories should be allowed to negotiate Medicaid provider rates as found in current law. The pending bills cause states and territories to lose money through the bills' treatment of the prescription drug rebate provisions. States and territories also should not be asked to forego a share of the savings from any new Medicaid rebates collected for the dual eligible population receiving prescription drugs through the Medicare Part D program.*

*These bills also impose a one-size-fits all federally-designed health insurance exchange and the insurance rating rules tie states' and territories' hands. Health insurance exchanges desired by any state should be state-based and state-designed to ensure maximum state flexibility to design and operate exchange mechanisms that facilitate the purchase of insurance. Utah should not be forced to replicate Massachusetts' exchange, and vice versa. In the same vein, the health insurance rating rules should account for the existing variation in state and territory statutes and the state and territory should retain the authority to provide oversight and adopt tighter rating bands if necessary.*

*In order to pay for the bills, the legislation cuts Medicare \$571 billion in the House bill and \$466.7 billion in the Senate bill. Also included are far-reaching massive tax increases which will impact American individuals and families at all income levels. From employer mandates and taxes on high-value insurance plans to taxes on both branded and generic drugs and medical devices, these bills are funded, and thereby the bills' costs are lowered, by taking more from taxpayers and reforming the health care system less. In particular, the Senate's \$6.7 billion insurance premium tax will be passed directly to consumers and will impose new costs on Americans who already have coverage. The unfunded mandates to states likely will require many states to necessarily raise taxes, too.*

*Although CBO has scored the Senate bill at \$842 billion and the House bill at \$1.3 trillion both bills are full of budget gimmicks. The bills delay spending until the fourth year and exclude the costly "Doc Fix" which ignores the over \$200 billion price tag associated with stopping the unavoidable cuts to physicians under the Medicare program.*

*Governors agree we should work to enhance the quality of health care while making it more affordable and efficient. Unfortunately, the opportunity to truly lower the cost of care has been lost in the rush to try to finish health reform. Both CBO and the Chief Actuary of the Centers for Medicare and Medicaid Services have warned the current legislation will increase the overall costs of health care. The federal government and the states should refocus efforts to lowering the cost of care which will in turn increase coverage, but simply increasing the number of individuals on the public plans without a plan to improve the public programs for participants is irresponsible.*

*At this juncture, small businesses, seniors, states and territories, and taxpayers have anxiety about Congress' pending health care legislation and rightfully so— one-sixth of our GDP is at stake. As Republican Governors, we believe in a system which eliminates red tape, empowers consumers to engage in making good health care decisions in the private market, and guarantees affordable coverage for patients with preexisting conditions. Missing from this important legislation is real medical liability reform and provisions which protect seniors' Medicare benefits and access to care. Several states have already implemented medical liability reform with good results; no real medical reform can be accomplished without tort reform. Instead, premiums are increased and small businesses are faced with onerous mandates rather than given the power to pool together and offer health care at lower prices, just as corporations and labor unions do.*

*Along with the majority of Americans and as leaders of 20 states and territories, we are disappointed with the lack of transparency. We urge you not to circumvent the normal committee process and to conduct an open, fully-bipartisan negotiation. It is time to slow down and pass meaningful health care reform, not hastily prepared partisan legislation which omits reform and saddles American taxpayers for generations to come.*

*Sincerely,*

*Governor Bob Riley, Alabama*

*Governor Jan Brewer, Arizona*

*Governor Sean Parnell, Alaska*

*Governor Charlie Crist, Florida*

*Governor Sonny Perdue, Georgia*

*Governor Felix Camacho, Guam*

*Governor Linda Lingle, Hawaii*

*Governor C.L. "Butch" Otter, Idaho*

*Governor Mitch Daniels, Indiana*

*Governor Bobby Jindal, Louisiana*

*Governor Tim Pawlenty, Minnesota*

*Governor Haley Barbour, Mississippi*

*Governor Jim Gibbons, Nevada*

*Governor John Hoeven, North Dakota*

*Governor Don Carcieri, Rhode Island*

*Governor Mark Sanford, South Carolina*

*Governor Mike Rounds, South Dakota*

*Governor Rick Perry, Texas*

*Governor Gary Herbert, Utah*

*Governor-elect Bob McDonnell, Virginia*

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[...] This post was mentioned on Twitter by bridgettwagner, The RGA, The RGA, Alex Skatell, craigkirchoff and others. craigkirchoff said: Here's the letter the RGA sent today opposing the Health Care Reform Bill: <http://bit.ly/6S2LA6> [...]

*Republican Governors: Health Care Bills Omit Reform « Republican ... | alaska news* says:  
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*January 25, 2010 at 3:19 am*

[...] By ROBB MANDELBAUM wrote a very interesting post today. Here's a quick excerpt: Twenty Republican governors and governors-elect sent a letter to Congressional leaders today urging them to refocus and pass "meaningful health care reform, not hastily prepared partisan legislation which omits reform and saddles ... [...]

### **Why Join?**

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FOR IMMEDIATE RELEASE – November 18, 2009      Contact: Blair Latoff  
202-463-5682

**U.S. Chamber Poll Shows Alaskans Opposed to  
Current Health Care Reform Proposal**

WASHINGTON, D.C.—The U.S. Chamber of Commerce today released a public opinion poll showing that 55% of Alaskans oppose the health care reform plan currently being discussed in Congress while only 31% support it. The poll of 500 registered voters was conducted November 8-10 by Ayres, McHenry & Associates to gauge support for health legislation currently being proposed.

“Polling clearly shows that Alaskans overwhelmingly oppose the current direction of health care legislation,” said Bruce Josten, executive vice president of government affairs at the U.S. Chamber of Commerce. “The Chamber has been a strong advocate for reforms that improve access to quality care and lower costs but, like Alaskans, we are very concerned about the increased costs that would result from the legislation.”

The Chamber commissioned polls in seven key states – Alaska, Arkansas, Indiana, Louisiana, Nebraska, North Carolina, and Virginia – all of which showed voters in those states oppose current legislation, with substantial majorities saying it will increase the federal deficit and raise the cost of their health care.

Highlights of the Alaska poll findings include:

Overall

**Question Wording and State Results for Statewide Surveys on Health Care Reform  
November 8-10, 2009**

Results are based on 600 respondents each in AR, IN, LA, NE, NC, and VA (Margin of Error ± 4.00 percent).

Results are based on 500 respondents in AK (Margin of Error ±4.38 percent).

Percentages may not equal 100 percent due to rounding.

**Which priority do you think the country should focus on first (ROTATE: improving the quality of health care, lowering the costs of health care, or covering more of the uninsured)?**

	AK	AR	IN	LA	NE	NC	VA
Quality	19%	25%	22%	35%	22%	24%	24%
Costs	42%	45%	49%	41%	52%	41%	39%
Uninsured	23%	16%	19%	14%	16%	22%	22%
Don't Know	16%	14%	10%	10%	11%	12%	15%

**One of the proposals suggested to address health care reform is to create a "public option," with the federal government selling health insurance. Do you support or oppose a government-run health insurance plan? IF SUPPORT/OPPOSE, ASK: Would that be strongly (support/oppose) or just somewhat (support/oppose)?**

	AK	AR	IN	LA	NE	NC	VA
Strongly Support	21%	16%	17%	19%	15%	22%	23%
Somewhat Support	11%	11%	12%	14%	12%	15%	12%
Somewhat Oppose	8%	11%	12%	9%	11%	9%	8%
Strongly Oppose	47%	55%	52%	51%	56%	44%	44%
Don't Know	12%	8%	8%	7%	7%	11%	12%

**Thinking about the overall health care reform plan being discussed in Congress, would you say you generally support or oppose that reform plan?**

	AK	AR	IN	LA	NE	NC	VA
Support	31%	29%	31%	36%	29%	40%	40%
Oppose	55%	60%	59%	55%	63%	49%	48%
Don't Know	14%	12%	11%	9%	9%	12%	12%

**Do you agree or disagree with each of the following statements about health care reform being discussed in Congress? (RANDOMIZE) IF AGREE OR DISAGREE, ASK: Would that be strongly (agree/disagree), or just somewhat (agree/disagree)?**

**A government-run public option will raise my health care costs.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	39%	47%	42%	43%	47%	42%	38%
Somewhat Agree	15%	14%	17%	13%	17%	15%	17%
Somewhat Disagree	12%	14%	15%	12%	14%	14%	14%
Strongly Disagree	22%	17%	19%	26%	16%	21%	21%
Don't Know	11%	7%	8%	7%	7%	9%	10%

**The reforms being discussed will raise my health care costs.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	38%	50%	40%	45%	46%	40%	39%
Somewhat Agree	15%	14%	19%	14%	19%	16%	15%
Somewhat Disagree	12%	12%	16%	13%	15%	14%	17%
Strongly Disagree	19%	19%	16%	22%	13%	20%	20%
Don't Know	15%	6%	9%	7%	6%	10%	9%

**The reforms being discussed will increase the deficit.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	56%	58%	56%	52%	62%	53%	50%
Somewhat Agree	15%	16%	20%	14%	18%	14%	18%
Somewhat Disagree	9%	8%	9%	12%	8%	13%	13%
Strongly Disagree	11%	13%	9%	15%	8%	13%	11%
Don't Know	9%	6%	7%	8%	4%	7%	9%

**The reforms being discussed will cause my taxes to go up.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	54%	57%	56%	53%	62%	53%	51%
Somewhat Agree	16%	15%	18%	14%	18%	16%	19%
Somewhat Disagree	9%	8%	9%	11%	9%	10%	11%
Strongly Disagree	12%	15%	11%	18%	7%	16%	13%
Don't Know	9%	5%	6%	4%	4%	6%	6%

**The reforms being discussed will expand government control over health care.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	51%	56%	53%	51%	55%	51%	51%
Somewhat Agree	20%	17%	20%	15%	22%	21%	21%
Somewhat Disagree	8%	8%	9%	9%	9%	10%	11%
Strongly Disagree	11%	15%	13%	20%	10%	13%	11%
Don't Know	9%	5%	5%	6%	5%	5%	7%

**Any new taxes and fees charged to health care companies will get passed on and will mean higher health care costs for me.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	45%	54%	52%	50%	51%	48%	46%
Somewhat Agree	17%	16%	20%	11%	20%	15%	19%
Somewhat Disagree	12%	11%	10%	13%	11%	13%	12%
Strongly Disagree	16%	15%	11%	21%	11%	17%	15%
Don't Know	11%	4%	7%	5%	6%	7%	7%

**The 400 billion dollars in cuts being proposed for Medicare will harm health care for seniors.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	41%	51%	43%	50%	47%	45%	43%
Somewhat Agree	13%	16%	17%	12%	18%	15%	15%
Somewhat Disagree	11%	10%	14%	11%	14%	14%	13%
Strongly Disagree	17%	15%	13%	20%	13%	15%	17%
Don't Know	18%	8%	13%	7%	8%	10%	12%

**A government-run public option will cause employers to drop health insurance coverage and move their employees into the government-run plan.**

	AK	AR	IN	LA	NE	NC	VA
Strongly Agree	34%	42%	42%	41%	41%	37%	36%
Somewhat Agree	20%	19%	20%	15%	20%	18%	16%
Somewhat Disagree	13%	11%	13%	13%	14%	15%	17%
Strongly Disagree	15%	18%	14%	25%	15%	17%	17%
Don't Know	18%	11%	11%	7%	11%	13%	14%

## **Methodology**

These seven statewide surveys were conducted November 8-10, 2009 by telephone with live interviewers, with 600 respondents in Arkansas, Indiana, Louisiana, Nebraska, North Carolina, and Virginia, and 500 respondents in Alaska. All respondents were selected randomly from a list of registered voters in the state, and confirmed their registration. Quotas were set by race, gender, and geography consistent with previous elections.

The margin of error for responses with an even split – 50 percent for one response and 50 percent for another response – is plus or minus 4.00 percent for 600 respondents and plus or minus 4.38 percent for 500 respondents. The margin of error is smaller when one response receives a higher level of support. For example, the margin of error when 75 percent of respondents choose one response and 25 percent choose another response is plus or minus 3.46 percent for 600 respondents and is plus or minus 3.80 percent for 500 respondents.

# NFIB

The Voice of Small Business®

ALASKA

February 17, 2010

The Honorable Mike Chenault  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Resolution 14

Dear Representative Chenault:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House Resolution 14. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

NFIB has vigorously opposed the current federal health care reform bill because it fails to address fundamental small business priorities. It does not make health insurance more accessible or affordable for small business. In fact, through new taxes, fees and government regulation, this legislation actually increases the overall costs of doing business for small businesses.

We join you in asking the Alaska Congressional delegation to vote against the current health care reform bills and to develop health care reform that is affordable and accessible to Alaska residents.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
~~House Health and Social Services Committee~~

# NFIB

The Voice of Small Business

ALASKA

February 25, 2010

The Honorable Mike Chenault  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Resolution 14

Dear Representative Chenault:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House Resolution 14 opposing current health care bills being considered in the U.S. Congress. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

No one has a larger stake in this. Small businesses have so much to gain yet so much to lose too. In economic times like these we must tread lightly and always remind our leaders in Washington to continuously check their policies by asking: Will this hurt or harm small business? Thus far, the bills passed hurt, rather than help, small businesses.

NFIB and its members have been constructive participants in the reform debate. We have worked to help our leaders understand the struggles small business owners face owning and operating their business. We have been, and will continue to be, committed to offering real solutions to real small business owners' problems. From pooling ideas to the optional free choice voucher we have pushed to be creative and constructive throughout the process.

The following are highlights of NFIB concerns with the federal bills:

### Employer Mandate

Economic research has shown time and again that mandates are a "one-two punch" where the cost is first borne by the employer, but is ultimately paid by the employee – through job loss and lower wages. While we have strong concerns that the employer mandate in the Senate-passed bill will most greatly harm low-wage and entry-level workers, the approach in the House-passed legislation is even worse. A pay-or-play approach tied to payroll tax is exceptionally onerous because profitable *and* unprofitable small employers are forced to pay this tax. In addition, because the exemption thresholds in the House-passed bill are not indexed for inflation, the exemption will become a healthcare equivalent of the alternative minimum tax, hitting more and more employers until there is no one exempted at all.

### Small Business Health Insurance Tax

Though small business has repeatedly called for reducing the cost of health insurance, the Senate-passed bill includes a devastating new \$60 billion dollar tax that will fall almost

National Federation of Independent Business – ALASKA

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exclusively on small business. Today, 87 percent of small business owners purchasing insurance can only buy plans in the fully-insured market. They will actually bear the full weight of this "fee" through premium increases or face the possibility of forgoing insurance altogether. Early estimates indicated that this new tax could increase premiums by nearly \$500 per year for a family of four. Additionally, as a result of the changes made in the Manager's Amendment to the Senate bill, the exemptions to self-insured businesses and certain not-for-profit insurers will further increase those costs. These exemptions, meant to pacify and garner support from big business and to secure votes from specific state delegations, are a devastating blow to the very population the bill was purported to help: small business.

### **Construction Mandate**

The recently-released December 2009 jobs report reinforces what so many in the construction industry already know: job loss is at historic levels. In December, 53,000 of the 85,000 jobs lost were in the construction industry. This narrowly-focused provision singles out one industry and excludes them from the small business exemption. This is an unprecedented assault on the construction industry. Worst of all, this mandate will kill jobs and is nothing more than a political payoff designed to make it easier for big unions to grow their membership rolls. In an industry where the national unemployment rate is exceeding 22 percent, this is NOT the reform our nation's construction industry needs or can afford. We strongly encourage you to support the removal of this arbitrary and onerous provision.

### **Paperwork Mandate**

Both bills enact a new tax-compliance paperwork burden on all small businesses. The "corporate reporting" provision is an expansion on reporting requirements (for transactions of more than \$600), which increases the cost of operating a small business and diverts resources away from growing and creating jobs.

### **Medicare Payroll Tax**

Since its creation, payroll taxes that fund Medicare programs have not been wage-based and have been dedicated specifically to funding Medicare. The Senate-passed bill increases the Medicare payroll tax and uses the additional revenue to pay for non-Medicare programs, creating a dangerous precedent to use payroll taxes to pay for more non-Medicare programs in the future.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Health and Social Services Committee



February 24, 2010

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20510

Dear Leader Reid and Speaker Pelosi:

On behalf of the country's largest, oldest and most respected associations in the small business and self-employed communities, the Small Business Coalition for Affordable Healthcare is writing to reaffirm our dedication to developing responsible solutions that will constrain healthcare costs and improve access to quality, affordable healthcare. As Congress reassesses its role in the healthcare reform discussion, we urge you to listen closely to the input of those on Main Street in towns and cities across the United States of America - our small businesses.

Regardless of political party or philosophical persuasion, there is overwhelming agreement that small business owners and their employees are trapped in a broken insurance marketplace with no choices and high costs. For more than a decade these men and women have been some of the most active and vocal advocates for reform - but not just any reform. They have specifically sought reforms that lower costs, increase competition, and expand choice. While they have expressed opposition to both the House-passed "Affordable Health Care for America Act" (H.R. 3962) and the Senate-passed "Patient Protection and Affordable Care Act" (H.R. 3590), they remain steadfast in their commitment to continue advocating for policy solutions that lower healthcare costs, but do not increase the overall cost of doing business.

America's small business community has supported various incremental reform efforts and has worked to include similar provisions in comprehensive reform proposals. Healthcare reform that improves access to quality, affordable healthcare includes:

- New opportunities for small businesses to pool together and purchase insurance across state lines
- Balanced and responsible insurance market reforms
- Streamlined benefit packages
- Much-needed choices like SIMPLE cafeteria plans
- Tax equity for our nation's self-employed
- Meaningful liability reform

These types of provisions open the door to many potential benefits for small business. However, if the price for these benefits increases the cost of doing business, small businesses will not support the overall legislation. Our small business owners remain deeply concerned that if new taxes, new mandates and new government programs are used to finance healthcare reform, those costs would quickly erase any savings that could have been realized from the reforms outlined above. Simply put, healthcare reform that improves access to quality, affordable healthcare should not include:

- New taxes on small business health insurance

- An employer mandate that encourages job cuts, not job creation, including mandates targeted at specific industries
- Union and big business carve-outs
- Increases in Medicare payroll taxes
- New paperwork burdens and costs for small businesses
- New taxes specifically targeted at the small business community
- Prohibitions on HSAs, FSAs and HRAs that limit employer and employee flexibility and choice

For more than a decade, our nation's entrepreneurs in the small business and self-employed communities have called on Congress to address the most critical problem they face – high healthcare costs. Our small business owners remain focused on finding solutions and the Small Business Coalition for Affordable Healthcare remains a resource to those in Congress committed to advancing policies that make access to quality, affordable healthcare a reality for the men and women who drive the engine of our economy – small business.

Sincerely,

Aeronautical Repair Station Association  
 American Bakers Association  
 American Farm Bureau Federation  
 American Hotel & Lodging Association  
 American Veterinary Medical Association  
 Associated Builders and Contractors  
 Associated Equipment Distributors  
 Associated Food and Petroleum Dealers  
 Associated General Contractors  
 Association of Ship Brokers & Agents  
 Automotive Recyclers Association  
 Bowling Proprietors Association of America  
 California Tire Dealers Association  
 Chesapeake Automotive Business Association (CABA)  
 Commercial Photographers International  
 Electronic Security Association  
 Gasoline and Automotive Service Dealers Association  
 Gasoline & Repair-Shop Association of New York, Inc.  
 Independent Electrical Contractors, Inc  
 Independent Office Products & Furniture Dealers Association  
 International Franchise Association  
 International Housewares Association  
 International Sleep Products Association  
 Mid-America Tire Dealers Association  
 National Association of Home Builders  
 National Association of Manufacturers  
 National Association of Theatre Owners  
 National Association of Wholesaler-Distributors  
 National Club Association  
 National Community Pharmacists Association  
 National Federation of Independent Business

National Newspaper Association  
National Retail Federation  
National Roofing Contractors Association  
National Tooling and Machining Association  
National Utility Contractors Association  
New England Service Station & Auto Repair Association  
New York State Association of Service Stations and Repair Shops  
New York Tire Dealers Association  
North Carolina Tire Dealers and Retreaders Association (NCTDRA)  
Ohio Tire and Automotive Association  
Petroleum Retailers and Auto Repair Association (PRARA)  
Precision Machined Products Association  
Precision Metalforming Association  
Printing Industries of America  
Professional Golfer's Association of America  
Professional Photographers of America  
Repair-Shop & Gasoline Dealers Association  
Service Station & Repair-Shop Association of Central New York, Inc.  
Service Station Dealers of America and Allied Trades  
Small Business & Entrepreneurship Council  
Society of American Florists  
Society of Sport and Event Photographers  
Stock Artist Alliance  
Tennessee Tire Dealers Association (TTDA)  
Textile Rental Services Association  
Tire Industry Association  
U.S. Chamber of Commerce  
Virginia Automotive Association  
Washington Maryland Delaware Service Station and Automotive Repair Association (WMDA)

CC: Senate Minority Leader Mitch McConnell, House Minority Leader John Boehner

The White House's Web site has a section where you can "find out what health insurance reform would mean for you and your family." It then asks you to pick your situation (e.g. "I am a small business owner") and walks through a Q and A. The answers provided by the president for small businesses don't exhibit what we believe is a fair representation of the facts and real impact on small business owners. Below are the *real* answers you need to know to those questions.

## **What Will the President's Proposal Mean for You? (and The Real Answers)**

**Q:** Will I be required to provide coverage that I can't afford?

**A:** President's answer: No.

**The real answer: Yes.**

Many businesses that have 50 or more workers consider themselves (and run their operations as) small businesses. These businesses will now have to pay a penalty of \$2,000 per worker if they do not offer healthcare coverage and have workers who access the exchanges. This penalty has *nothing* to do with affordability and *everything* to do with punishing businesses for something the government has decided businesses should be forced to provide. Worse, with new mandates like these, what incentive is there for a firm to grow any bigger than 50 employees when it means employers may face such stiff fines? This approach is the exact opposite of a recipe for incentivizing job growth.

**Q:** Why would it be easier to provide coverage than it is today?

**A:** President's answer: Reform will provide at least three tangible benefits that will make it easier and cheaper for small businesses to provide coverage...

**The real answer: The only thing that will make it easier to provide coverage is to make it less expensive. Cost is the No. 1 problem facing small businesses.**

The real issue that the president needs to focus on is controlling costs, this is the only way to make purchasing insurance "easier" for small business. Frankly, small business owners aren't interested in placing a \$1 trillion bet on a proposal that can't assure them that their costs won't go up.

The proposal ignores ideas that small business supports that will first and foremost reduce costs, which will make it less expensive and easier for businesses to offer coverage. One real and immediate solution the president could have provided to small businesses was something we have brought up frequently but wasn't included in his proposal. It is called the Optional Free Choice Voucher. This would allow employers to give pre-tax dollars to their workers and let the worker purchase the plan that best fits their needs. This idea creates choice, portability and puts the consumer in the driver's seat, a win-win for employers *and* workers.

**Q:** Will I be able to pool with other small businesses to buy coverage?

**A:** President's answer: Yes.

**The real answer: Not in a way that is any different than you do today, and not across state lines.**

Current law already requires each insurer to pool small businesses (small-group plans) together at the state level. But any small business that has received a premium increase that doesn't lower their costs because the pools are too small to bring about savings. But if they could pool across state lines

the pools would be bigger and the savings significant. However, the president's proposal does not allow pooling across state lines. If the president wants to give greater purchasing power to small businesses, he would let them pool their own risk together across state lines to purchase insurance just like big business and unions do today.

**Q:** Will my employees be able to buy coverage if I cannot afford to provide it?

**A:** President's answer: Yes.

**The real answer: Yes. But you will still be paying for it.**

Healthcare coverage is not free. Someone is going to pay if there are requirements on individuals and businesses to pay into the healthcare system. As the employer, if your employees go into the exchange, you'll be left footing a portion of that bill to help cover your workers, whether or not you can afford to provide health benefits.

One of the most common refrains in the healthcare debate is that there will be plenty of tax credits to help small businesses and individuals afford coverage. Tax credits seem to have become the magic elixir that cures all that ails small business and their employees. But not everyone will receive a tax credit. Tax credits for employees (individuals and families) are only available if you meet strict income level requirements.

**Q:** Will my taxes go up to pay for the cost of covering the uninsured?

**A:** President's answer: No.

**The real answer: Yes, your taxes will go up.**

A nearly \$1 trillion bill that the president says "will not add one dime" to the deficit has to be paid for somehow and that means taxes. The President's proposal includes even higher taxes and fees than the Senate bill, and they fall on small businesses, including a new \$60 billion tax on health insurance, increased Medicare payroll taxes and a new Medicare tax on investments.

The new \$60 billion tax on health insurance is an especially egregious tax, since it directly and specifically hits small businesses and individuals. Big businesses and unions were specifically exempted. The penalties of \$2,000 per worker levied on small businesses with more than 50 workers who can't afford to provide healthcare (and who have workers accessing the exchange) is another indirect tax, but a fee no less. Medicare payroll taxes will also be increased by .9 percent as well as a brand new 2.9 percent Medicare tax on non-wage income like dividends, interest and capital gains.

**Q:** What are you going to do about all the confusing forms I have to fill out?

**A:** President's answer: Make it simple.

**The real answer: We'll have to wait and see...**

But when have you known bureaucrats in Washington to ever make things "simpler?" The fact is that the cost of complying with onerous paperwork is especially burdensome to small businesses, who lack in-house finance departments and experts. For example, the cost of tax compliance is 66 percent higher for small businesses compared to large businesses. And their isn't a good track record on this, the recently-passed Senate bill added a new reporting requirement that will be levied on small businesses as a pay-for for healthcare reform. Sadly, the president did not exclude this pay-for in his proposal.

- March 11, 2010

## Senate Health Bill Would Up Costs for Millions in Middle Class, Analysis Finds

A nonpartisan study is casting new doubt on President Obama's campaign pledge not to raise taxes on the middle class.

The Senate health care bill crucial to saving President Obama's signature domestic initiative will hit the wallets of a quarter of all Americans making less than \$200,000 per year, according to an analysis by the nonpartisan Joint Tax Committee that assessed the way the bill would hit taxpayers directly through new taxes and fees and indirectly through taxes levied on health care providers and passed on to consumers.

The committee also determined that the bill would subsidize insurance premiums for 7 percent of taxpayers -- about 13 million people -- while some 73 million people would face higher costs from the new fees and taxes.

The potential tax increases in the bill could pose significant problems for the president as he makes his final push for health care reform because he promised to protect middle-class Americans from any tax hikes. Republicans already are pouncing on the committee's analysis.

"For every family that gets some benefit from this program, in other words, a premium subsidy, three families are going to get a tax increase and those three families obviously include the bulk of people you'd call middle class America," Sen. Chuck Grassley, R-Iowa, told Fox News.

Democratic leaders are scrambling to gather enough votes to pass the bill in the House later this month so that changes House members want can be added in the Senate through reconciliation, an unusual tactic that allows a simple majority in the Senate to counteract a filibuster by the minority. The steps are part of Obama's final push to pass a comprehensive health care reform bill.

The analysis comes as the Congressional Budget Office updated its cost tally of the Senate bill, estimating that the last-minute changes made to the bill before it was passed Christmas Eve upped the price to \$875 billion from \$871 billion. The CBO also estimates that the bill would reduce the federal deficit by \$118 billion over a 10-year period, revised down from \$132 billion.

But the projection could be undermined by future spending needed to administer parts of the bill, including up to \$10 billion for the IRS, up to \$20 billion for Health and Human Services and up to \$50 billion for "grant programs and other provisions."

The new analysis highlighting the tax burdens of the Senate bill could undercut the president's push.

There's a long list of taxes in the Senate bill, including some paid directly by consumers. Other taxes are on providers who will simply pass it on to consumers.

"It has imposed a lot of taxes and fees on the drug companies, on the medical device manufacturers, on the insurance companies," said economist Doug Holtz Eakin. "All of that is going to show up in higher sticker prices for those that have health insurance."

And then there is the proposed tax on high-cost insurance plans, which was pushed back but will result in significantly higher tax payments by tens of millions of Americans who have generous insurance plans through their workplace.

Also, there would be a brand new Medicare tax on dividends and capital gains, which haven't been taxed before.

## Analysis of Reid Health Bill with CBO Highlights

**COST: The CBO Scores Reid's Bill at \$849, Republicans say the cost of the bill is \$2.5 trillion over 10 years of full implementation:** The Republicans estimate is based on the *true* bill implementation date of 2014 (for ten years), rather than 2010, when revenues start being collected, but coverage doesn't occur until FOUR YEARS LATER. This results in a significantly higher score than that estimated by the CBO.

**COVERAGE: Reid's bill will extend coverage to 31 million uninsured Americans covering 94% of the nation's population:** According to the CBO, this still leaves 24 million nonelderly residents uninsured, about 1/3 of whom are undocumented immigrants. Currently 84% of the nation's population has health insurance.

**ABORTIONS:** The bill extends current law that prohibits federal funds from being used for abortions by requiring those funds be segregated by private insurers that offer abortion coverage. The bill does, however, allow the Health and Human Services Secretary to determine if the government plan will cover abortions. It would allow the public option to cover elective abortions as long as it uses money collected as premiums — not subsidies — to pay for the procedure, and as long as the government does not bear any "insurance risk" for the coverage.

**INDIVIDUAL MANDATE:** Penalties reaching \$750 per person for noncompliance by 2016. The penalties start in 2014.

	Single	Single +1	Single +2<
2014	\$95	\$190	\$285
2015	\$350	\$700	\$1050
2016 etc.	\$750	\$1500	\$2250

**EMPLOYER MANDATE:** According to the CBO, "*Employers with 50 or more workers that do not offer coverage would have to pay a fine of \$750 for each full-time worker if any of their workers obtained subsidized coverage through the insurance exchanges. This dollar amount would be indexed, and thus will increase as health care costs rise. If a full time worker is offered coverage through his employer, he would not be eligible for subsidies through the exchanges unless the worker had to pay more than 9.8 percent (in 2014, but indexed over time) of their income for employer insurance, in which case the employer would be penalized.*" CBO estimates a cost savings of \$28 billion/10 years.

**MEDICARE PAYROLL TAX INCREASE:** There will be an increase in the Medicare payroll tax of 1.95% (vs. the current 1.45%) for individuals making \$200,000 or more and couples earning \$250,000 or more to 1.95 percent. The income thresholds triggering the 0.5 percent increase in the Medicare payroll tax are not indexed for inflation, meaning it will trap more people each year. CBO estimates this raises \$54 billion/10 years.

	<b>Wages (Employer/Employee)</b>	<b>Self-Employment Net Income</b>
Current Law and New Rate on First \$200,000 (\$250,000 MFJ)	1.45%/1.45%	2.9%
New Rate on Amount Which Exceeds \$200,000 (\$250,000 MFJ)	1.45%/1.95%	3.4%

The 0.5% new rate addition is not deductible for the self-employment tax adjustment.

### NEW TAXES:

**Tax on high-cost "Cadillac" insurance plans:** Plans valued at \$8,500 for individuals and \$23,000 for families will be subject to taxation. The Baucus plan had high-cost plans at \$8,000 individual and \$21,000 family. States with high health costs will get a \$3,000 increase in the thresholds. The CBO estimates this raises \$149 billion/10 years, which means the lion's share of paying for this bill is on the backs of those with robust health plans. Beginning in 2013, these Cadillac plan would be subject to a 40 percent excise tax. After 2013, those amounts would be indexed to overall inflation plus 1 percentage point.

**Medical Device Tax:** \$2 billion per year. This has been cut in half (from an annual amount of \$4 billion/year) to appease Minnesota, Indiana and Massachusetts senators.

**Insurers Tax:** \$6 billion per year.

**Pharma Tax:** \$2 billion per year.

**Medicine Cabinet Tax:** No longer allowable to use health savings account (HSA), flexible spending account (FSA), or health reimbursement (HRA) pre-tax dollars to purchase non-prescription, over-the-counter medicines (except insulin). Raises \$5 billion/10 years.

**HSA Withdrawal Tax Hike:** Increases additional tax on non-medical early withdrawals from an HSA from 10 to 20 percent, disadvantaging them relative to IRAs and other tax-advantaged accounts, which remain at 10 percent. Raises \$1.3 billion/10 years.

**FSA Cap:** Imposes cap on FSAs of \$2,500 (now unlimited). Raises \$14.6 billion/10 years.

**Raises Medical Itemized Deduction from 7.5% to 10% of AGI:** Waived for 65+ taxpayers in 2013-2016 only. Raises \$15.2 billion/10 years.

### MEDICARE CUTS:

**Medicare Cuts:** \$464.4 billion. The CBO says “[the Reid bill] substantially reduces the growth of Medicare’s payment rates for most services. The Medicare provisions that result in the largest budget savings include: permanent reduction in the annual updates to Medicare payment rates for most services in the fee-for-service sector (other than physicians’ services) yielding budget saving of \$192 billion over 10 years. The other cuts come from Medicare Advantage (\$118 billion over 10 years) and reducing Medicaid and Medicare payments (\$43 billion) to hospitals that serve a large number of low-income patients, known as disproportionate share hospitals (“DSH”) (pronounced DISH).

**Independent Medicare Advisory Board (IMAB):** Will be established to recommend changes to the Medicare program, in order to limit the rate of growth in that program’s spending. These recommendations go into effect automatically unless blocked by subsequent legislative action, similar to BRAC. IMABs recommendations will focus on reductions in subsidies for Medicare Advantage plans and changes to payment rates or methodologies for services furnished in the fee-for-Service sector by providers other than hospitals, physicians, hospices and suppliers of durable medical equipment. Its first set of recommendations will be in 2013 for implementation in 2015. The CBO estimates savings would be \$23 billion over the 2015-2019 period.

### DEFICIT REDUCTION:

**Reduces the deficit by \$118 billion/10 years and by \$640 in the out years (2019-2028):** The CBO however says the following: “*In the subsequent decade (2019 and beyond), the collective effect of [the Reid bill] provisions would probably be small reductions in the federal budget deficits if all of the provisions continued to be fully implemented. Those estimates are subject to substantial uncertainty.*”

### NEW MANDATORY/ENTITLEMENT SPENDING:

**Medicaid:** The non-elderly at or below 133 percent of FPL would be made eligible for Medicaid. According to the CBO, “*The federal government would pay all of the costs of covering newly eligible enrollees through 2016; in subsequent years the share of federal spending would vary somewhat from year to year but ultimately would average about 90 percent. Beginning in 2014, states would receive higher federal reimbursement for SCHIP beneficiaries, increasing from an average of 70 percent to 93 percent.*”

**CLASS Act:** The bill includes a long-term insurance program known as the CLASS Act that some senators have concerns with, saying its early savings would eventually be eaten up by benefits paid to enrollees. Reid has attempted to appease them by not applying the \$75 billion in

savings from the program to the offsets. The CBO and the Obama Administration's Chief Health Actuary have both said that the CLASS Act will run significant budget shortfalls outside the 10 year budget window. CBO wrote that under the current benefit structure, **"the program would add to future federal budget deficits in large and growing fashion."**

- Sen. Kent Conrad (D-N.D.) Chairman of the Senate Budget Committee, called the CLASS Act **"a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would have been proud of,"** and he vowed to block its inclusion in the Senate bill.
- In its review of the House legislation, the Administration's Chief health Actuary said the CLASS Act would result **"in a net Federal cost in the longer term."** The Chief Actuary also determined that the program faces **"a significant risk of failure"** because the high costs will attract sicker people and lead to low participation.
- The Congressional Budget Office agreed, saying that **"the CLASS program included in the bill would generate net receipts for the government in the initial years when total premiums would exceed total benefit payments, but it would eventually lead to net outlays when benefits exceed premiums....** In the decade following 2029, the CLASS program would begin to increase budget deficits."
- The *Washington Post* called the CLASS Act a **"gimmick"** **"designed to pretend that health care is fully paid for."** The *Post* goes on to say that **"...the money that flows in during the 10 year budget window will flow back out again. These are not 'savings' that can honestly be counted on the balance sheet of reform."**

**Medicare SGR:** According to the CBO, *"[Under this bill] Physicians reimbursement rates will increase for 2010 but would be reduced by about 23 percent for 2011 and then remain at current-law levels for subsequent years. According to CBO, the legislation includes a number of provisions that would constrain payment rates for other providers of Medicare services. In particular, increases in payment rates for many providers would be held below the rate of inflation."*

**Prevention and Public Health Fund:** This is a Harkin pet project that was included in the HELP bill. The Reid bill provides mandatory appropriations of \$15 billion to establish this fund. CBO estimates that outlays of these funds would total \$13 billion over ten years.

### Key Talking Points:

- **Effective Dates:**
  - *The effective date of the Reid bill for the mandates and penalties to individuals and employers has been delayed by four years, to January 1, 2014 to take in people's money for four full years, before ever having to pay for health care coverage. This essentially means this bill would collect money for four years, and pay our benefits for six years, under the current CBO score. Moving back the effective date is a transparent budget gimmick designed to push spending outside the 10-year window.*
  - *Is our job here to do things for optics or are we here to implement changes to help struggling Americans, particularly in this time of economic downturn, be able to purchase health insurance despite a pre-existing condition?*

- *Keep in mind, taxes and penalties will increase before your health benefits start in 2014.*
- **Medicaid Expansion:**
  - *The provisions in this program would require states to expand their Medicaid programs but what if states aren't able to continue covering those lives after the federal match money decreases? Will our states be forced to push those lives off the Medicaid program or will states have to further reduce Medicaid reimbursement rates, and diminish access to patients?*
- **Premium Increases:**
  - *Premera Blue Cross Blue Shield of Alaska estimated that premiums will likely rise by 60-161% (\$1,500 - \$2,500 annually) (similar to the Senate Finance Committee passed bill) because of the increased requirement of a higher level of insurance coverage (65% actuarial value.)*
- **Medicare Tax Increase:**
  - *Nearly half a trillion in cuts to Medicare and no reform of the flawed SGR formula to ensure updates to doctors and nurses for caring for Medicare patients.*
- **Junk Lawsuit Reform:**
  - *This bill contains NO provisions to address what the CBO estimates would save nearly \$60 billion/10 years and independent studies have estimated could save between \$100-200 billion a year in limiting the cost of defensive medicine that affects our overall health care costs and premiums as well as the cost to the patients.*

## What ISER – the Institute for Social Economic Research at the University of Alaska Anchorage - has said about Medicare in Alaska

- **Seniors in Low Paying Medicare States Will Be Forced to Wait In Line:** *Independent of the doc fix, in Alaska, the remainder of seniors are at risk of long lines to see a primary care doctor and overflowing to community health centers and hospital emergency rooms where existing capacity is highly likely to be quickly overwhelmed and long wait times become increasingly common*
- **Additional New Insured Patients Will Hurt Medicare Beneficiaries in this Low Paying Federal Health Program:** *Federal health care reform applied to Alaska likely to exacerbate an already very challenging access situation for Alaska's seniors as baby boomers age in to Medicare and find themselves waiting in line behind a rapidly expanding line of better paying private plans.*
- **In Alaska's Largest City, with the Highest Number of Seniors in Alaska, the Medicare Shortages Are Most Severe:** *17% of Primary Care Doctors – only 5 are accepting new Medicare patients in Anchorage. The five are at the Anchorage Neighborhood Health Center – a community health center that should be for those who are uninsured or poor, but are being utilized by seniors and the disabled who are on Medicare because these patients simply don't have access to a primary care doctor.*
  - **42% of all non-native Alaskans 65 and older live in Anchorage and 38% of all Alaska 65 and older are in Anchorage.**
  - **Due in large part to baby boomers (those born between 1946 and 1964) hitting Medicare age, one in four Alaskans is a baby boomer.**
  - **In 2008, there were 49,455 Alaskans 65 and over -- by 2015 – in 5 years, the number is expected to increase 50% to almost 75,000 by 2015.**
  - **By 2020, in just 10 years, the estimate is projected to increase to over 86,000 in Anchorage.**
    - Yet, we have fewer and fewer primary care doctors willing to accept Medicare patients and we're looking to cut half a trillion from Medicare to pay for a new government entitlement.
- **Medicare Patients Are Being Pushed Out of Doctors Offices Because of Low government Reimbursement Rates:** *The numbers of patients 65 and older at Anchorage Neighborhood Health Center (ANHC) and Anchorage's VA facilities have jumped on the order of 50% within a few years. The ANHC saw twice as many Medicare patients in 2007 as in 2001.*
  - Older Alaskans have also been visiting the emergency room at Providence Hospital in growing numbers. *Through early 2009, visits by older residents were growing just slightly – less than 3% a years over the past five years. But from May 2008 to September 2009, the number of visits increased at an annualized rate of 12%.*

## ISER Report on Medicare in Western States as Compared to Private Insurance Rates:

- **According to a recent GAO study from 2006, the percentage of Medicare beneficiaries having “big problems” finding a personal doctor were most acute in states such as Alaska, Oregon, Nevada, Colorado and New Mexico. (\*percentage indicates the number of Medicare beneficiaries reporting “big problems” finding a personal doctor)**
  - Alaska: 15% (One in 10 doctors surveyed has opted out of the Medicare program, and most are in Anchorage)
  - Oregon; Colorado; New Mexico; Nevada: 8-15%
  - Washington and Idaho: 6-8%
  - Utah; Arizona: 4-6%
    - *While we have growing problems in the Western part of the United States with fewer and fewer primary care doctors willing to accept Medicare patients, this health care bill before the Senate today seeks to cut half a trillion from Medicare to pay for a new government entitlement.*
- **Medicare versus Private Insurance Reimbursement for Physicians Services in 2008-2009:**
  - **Wyoming and Alaska:** Medicare ranks “substantially behind” both private insurance and Medicaid
  - **Montana, Idaho, Arizona and New Mexico, Washington, Oregon, Utah and Colorado:** Medicare ranks behind private insurance
    - *While we have already low reimbursement rates under Medicare in the Western part of the United States, this health care bill before the Senate today seeks to cut half a trillion from Medicare to pay for a new government entitlement.*
- **Why Primary Care Providers Won’t Accept New Medicare Patients:**
  - **Of the 142 primary care doctors in Alaska, 98% reported “Inadequate reimbursement” as the reason for not accepting Medicare. While this is Alaska specific, if your state is one of the states where your Medicare beneficiaries are facing major problems finding a primary care doctor, you can bet this statistic applies to your state as well.**
    - *So instead of addressing a long-term fix for how we reimburse primary care doctors under the Medicare program, this bill completely ignores the problems facing seniors throughout this country, and particularly in the western part of the U.S., by bringing to the Senate floor a health care bill that seeks to cut half a trillion from Medicare to pay for a federal expansion of health care and a new government entitlement program.*

# POLITICO

## Obama wants side deals out of bill

By: Carrie Budoff Brown  
March 10, 2010 08:11 PM EST

President Barack Obama is pushing Senate Majority Leader Harry Reid to go further than Obama has previously disclosed to strip the final health care reform bill of the narrow deals aimed at appeasing specific senators.

The president wants to eliminate more than just Sen. Ben Nelson's "Cornhusker Kickback" and Sen. Bill Nelson's agreement to shield 800,000 Florida seniors from Medicare Advantage cuts, the White House told POLITICO Wednesday in response to questions about other deals in the bill.

Obama has asked Reid to strike provisions requested by senators from at least five other states, in an unusual move that accentuates the culture clash between the president's rhetoric on changing the ways of Washington and the Senate leader's needs to exercise the old-fashioned tools of Congress to pass laws.

"We've removed many of the special provisions that initially found their way into the legislation, and we've made it clear to the Senate that the president's position is that the final bill shouldn't include any earmarks or provisions that would favor a single state or district over the rest of the country," White House spokesman Reid Cherlin said in a statement Wednesday.

Reid spokesman Jim Manley said the decision on what to keep in the bill rests with congressional leaders and that no determinations have been made.

Senators whose deals have been targeted — some of whom did not know the deals might be in danger — said they would fight to maintain them, arguing they are in no way as egregious as the Cornhusker Kickback.

"We have defended it, and we will defend it," said Sen. Bernie Sanders (I-Vt.), whose state picked up \$600 million in extra Medicaid funding for having already expanded its coverage of low-income individuals.

But ever since last-minute deal making helped sour voters on the Senate bill that passed on Christmas Eve, any provision identified by Republicans or the media as benefiting a single state or a small number of states has sat on shaky ground.

Obama tried to publicly distance himself from the deals, saying he wasn't in the room when they were struck, even though some of his aides were. The president rankled Reid and House Speaker Nancy Pelosi by criticizing them for doing what

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generations of their predecessors have done: cut deals. And in the process, he may have made it entirely untenable for them to deploy one of the tried-and-true methods for muscling major reforms through Congress.

"Legislators need pork to make things happen," Julian Zelizer, a Princeton University professor of history and public affairs, wrote in POLITICO Wednesday. "It is unrealistic to expect that legislative leaders won't use one of the few tools at their disposal to get things done."

Zelizer noted that then-Senate Majority Leader Lyndon B. Johnson promised the construction of a federal dam in exchange for votes for the Civil Rights Act of 1957 from a group of Western Democrats.

In a letter to congressional leaders last week, Obama targeted the Nebraska and Florida deals for elimination. (The Florida provision could also shield some seniors in California, New York, New Jersey and Pennsylvania, according Sen. Bill Nelson's office.) But in response to questions from POLITICO, the White House detailed other provisions that the president wants to see removed.

The so-called Louisiana Purchase is still safe, according to the White House, since the provision requested by Sen. Mary Landrieu (D-La.) would apply to any state in which all the counties have been declared a disaster zone. The Medicaid funding formula fix is worth \$300 million to Louisiana, according to Landrieu.

But Obama has asked Reid to strike a provision that would send \$1.1 billion in

extra Medicaid funding to Massachusetts and Vermont — states that have already expanded Medicaid coverage but would otherwise not be reimbursed at the same level as states that would boost their Medicaid populations for the first time under the bill's mandate.

"What I told Harry Reid is that Vermont does the right thing, and I don't want Vermont to be penalized for doing the right thing," Sen. Patrick Leahy (D-Vt.) said in a statement.

Through a spokeswoman, Sen. John Kerry (D-Mass.) said he, too, was working with the president "to make sure Massachusetts's past investment to expand health coverage to low-income individuals is recognized in health reform."

The president is also asking Reid to "look at removing" a \$100 million hospital grant program requested by Sen. Chris Dodd (D-Conn.), who has acknowledged that the University of Connecticut would qualify for the money.

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But the senator's aides added that university teaching hospitals in a dozen states would also qualify and that the program is not an earmark, since the money would be awarded on a competitive basis through the Department of Health and Human Services.

Another provision the president has asked Reid to consider removing was promoted by Senate Finance Committee Chairman Max Baucus (D-Mont.) on behalf of residents of Libby, Mont.

The bill includes language that would allow people who have been exposed to asbestos from a vermiculite mine in the town to receive Medicare assistance, although a Baucus aide said the language would apply to victims of any government-declared public health emergency. The language would fulfill the government's responsibility, first codified in a 1980 law, to provide health care to victims of public health emergencies, the aide said.

Libby was the first town to receive the emergency declaration, and implementing language is needed to finish the process, the aide said.

"The Senate bill meets the responsibility that was established in 1980, so I can't understand why anyone would want to make it impossible to meet our statutory obligation to address disasters of this magnitude, where more than 290 people have died from asbestos-related disease," Baucus said in a statement. "This type of tragedy could happen to any town, anywhere across the country, and all Americans deserve to have this protection."

The aide added: "The public health emergency provision is not a special deal."

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