

Status of Republican-Sponsored Amendments Accepted to H.R. 3200 vs. Maintained in H.R. 3962

A Study of Bipartisanship

The final “Pelosi Government Healthcare Takeover” bill, H.R. 3962, moves a step further *away* from bipartisanship by entirely removing a total of 12 Republican amendments (1 of which was bipartisan) and gutting numerous other amendments of the 27 that were previously accepted in the Committees on Energy and Commerce and Education and Labor (Ways and Means did not accept any Republican amendments). Of the 27 previously accepted in committees, 7 were bipartisan, and 20 were Republican only.

Only 5 Republican amendments survived fully intact (4 others that remained intact were bipartisan) while 6 others were either significantly gutted or modified during the Pelosi rewrite.

The compiled list below does not include the amendments that were withdrawn with the agreement to work to incorporate them into the final bill (which for the most part were also not included in the final bill).

Committee on Energy and Commerce

Create a Moratorium on Medicare Reductions in Payment Rates for Certain Interventional Pain Management Procedures Covered Under the ASC Fee Schedule (Whitfield, R-KY and Stupak, D-MI)

Summary: This amendment, accepted in Committee, would place a moratorium on the reimbursement cuts to 10 of the top 11 procedures performed by interventional pain physicians in an Ambulatory Surgical Setting. It also includes accreditation language to ensure procedures performed in the ASC setting are required to be performed in an accredited setting, by a well-qualified physician as determined by HHS. This amendment would help ensure that valuable pain-relieving procedures remain available to Americans in need.

Status: This amendment was not included in H.R. 3962.

**Require Rural Representation on the Health Benefits Advisory Committee
(Walden, R-OR)**

Summary: This amendment, accepted in Committee, would help ensure that the new “Health Benefits Advisory Committee” established in the Democratic legislation accurately represents the interests of rural Americans. Currently 21 percent of the U.S. population lives in rural areas. Mr. Walden's amendment would ensure that at least one quarter of the Committee's members be practitioners who have legitimate experience practicing in a rural area for at least a five-year period preceding their appointment.

Status: This amendment was not included in H.R. 3962.

**Require Proportional Rural Representation on the Medicare Payment Advisory
Commission (Walden, R-OR)**

Summary: This amendment, accepted in Committee, would help ensure that the demographics of the Medicare Payment Advisory Commission (MEDPAC) more accurately represent the demographics of Medicare recipients. Currently, approximately 26.8% of Medicare recipients live in rural areas. However, only 1 of MEDPAC's 17 commissioners has rural healthcare credentials. This amendment would require that 5 commissioners on MEDPAC be representatives of rural healthcare in order to more appropriately represent the Medicare population and its needs.

Status: This amendment was not included in H.R. 3962.

**Prohibit Religious Discrimination for Spiritual Care in the Exchange
(Shimkus, R-IL)**

Summary: This amendment, accepted in Committee, would ensure that there is no religious discrimination for patients seeking spiritual care under plans in the new Health Insurance Exchange. It only requires that, if a patient is entitled to medical care under a minimal qualifying plan, as determined by the Secretary, the patient cannot be denied care solely on the basis of its religious or spiritual content. The definition of spiritual care is limited to what is recognized by the IRS as a deductible medical expense.

Status: This amendment was not included in H.R. 3962.

Ensure Care Is Not Denied by the Center for Comparative Effectiveness (Rogers, R-MI)

Summary: This amendment, accepted in Committee, would ensure that care will not be denied based on research conducted, supported, or developed by the Center for Comparative Effectiveness Research, the Comparative Effectiveness Research Commission, or the Federal Coordinating Council for Comparative Effective Research. England, which has centralized healthcare, has a similar agency called the National Institute for Health Clinical Excellence (NICE) that has been used to limit access to breast cancer drugs for terminally ill women and restrict access to lifesaving procedures like dialysis. This amendment would ensure that America does not take such a callous and calculating approach to its healthcare.

Status: This amendment was not included in H.R. 3962. Although the title of the amendment was included under Sec. 1401, the substance is gone.

Prohibit the CCER from Limiting Treatment (Gingrey, R-GA)

Summary: This amendment, accepted in Committee, would prevent government bureaucrats at the new Center for Comparative Effectiveness Research (CCER) from dictating to physicians what treatments they can or cannot offer. In the legislation, the CCER is tasked with gauging what treatments and procedures are most cost effective. This manner of government-sponsored research, in conjunction with the new federal crowd-out health plan, would represent the first step towards implementing a policy of bureaucrat health care rationing. This amendment will prevent this from happening, by ensuring that this new agency cannot take the next dangerous step and put a federal bureaucrat between the American people and their doctors. It would guarantee that doctors are still given the freedom to recommend the best medical treatment for their patients, regardless of what procedures the CCER determines are most cost effective.

Status: This amendment was not included in H.R. 3962.

Remove Prompt Pay (Whitfield, R-KY)

Summary: The amendment, accepted in Committee, would remove the “prompt pay” discount from the Medicare part B reimbursement formula. This ensures that we protect our distribution system in the U.S. by removing the incentive for wholesalers to sell directly to physician offices (Distributors save consumers \$32 billion dollars annually). It also ensures physician offices that administer part B drugs will be adequately reimbursed through Medicare.

Status: The amendment was not included in H.R. 3962.

**Ensure that Qualified Plans Will Have Review and Appeals Processes
(Burgess, R-TX)**

Summary: This amendment, accepted in Committee, would ensure that all qualified health plans (including the public plan) under the bill will have a reasonable and accessible utilization review and appeals process so that patients who are denied care can appeal those decisions (to panels comprised of medical professionals) when an insurance company tries to step in-between a patient and his or her doctor.

Status: All statutory protections were removed and instead H.R. 3962 references regulation that is less protective that the Commissioner is to use as a basis for a review standard for qualified plans. Most of the substance of the amendment, including deadlines in statute for appeals reviews, however, was eliminated.

**Provide Incentives for States to Enact Tort Reform
(Gordon, D-TN, Deal, R-GA, and Matheson, D-UT)**

Summary: The amendment, accepted in Committee, would provide incentive payments to states that implement alternative medical liability laws that include certificate of merit or early offer provisions.

Status: This amendment was included in H.R. 3962 under Sec. 2531 but significantly modified. Under Section 2531 of H.R. 3962, even if a state has an early offer or certificate of merit program, that state is not eligible for the incentive payments if its law limits attorneys' fees or imposes caps on damages. This eligibility criteria is new. Limiting attorneys' fees and imposing caps on non-economic damages are two of the most proven ways to reduce medical liability insurance premiums and lower costs in the health care system. The language guts the amendment adopted by the Committee and provides another giveaway to the trial bar.

Allow Veterans to Obtain Coverage Through the Exchange (Buyer, R-IN)

Summary: The amendment, accepted in Committee, would ensure that veterans, military personnel, and their families can retain the choice of keeping their respective VA health or TRICARE coverage and obtain additional private or public health insurance in the health insurance exchange. Under H.R. 3200, veterans and servicemembers were expressly prohibited from enrolling in the exchange. In 2007, almost 80% of veterans enrolled in VA care had additional health coverage. This amendment would allow this to continue under the Democratic healthcare plan.

Status: This amendment was not included verbatim in H.R. 3962. Because of the conflicting language in H.R. 3962, the bill does not explicitly state that veterans and servicemembers enrolled in their respective health care programs are eligible to obtain health insurance in the health insurance exchange.

Ensure Exchange Does Not Affect Department of Veterans Affairs and Department of Defense Health Programs (Buyer, R-IN)

Summary: This amendment, accepted in Committee, would preserve the authorities of the Secretary of Defense and the Secretary of Veterans Affairs over their respective health care systems. Without such preservation of authorities, the new Health Care Commissioner would have primary authority over all health care programs, including the VA and TRICARE.

Status: The amendment is included in H.R. 3962, but it only applies to one subtitle of the bill. On the Energy and Commerce Democrats' website, they describe this provision as affecting the entire act, when in reality, the language in H.R. 3962 only applies to one subtitle.

Termination of Duplicative Grant Programs (Sullivan, R-OK)

Summary: This amendment, accepted in Committee, would require the HHS Secretary to conduct a study on new and old government programs affected by this legislation to identify and ultimately eliminate inefficiency and duplication. As a common sense, good government amendment, it is aimed at stopping wasteful and inefficient government spending in our health care programs. The new Democrat healthcare proposal creates an alarming number of massive new federal spending programs, many of which are charged with responsibilities already assigned to pre-existing programs. This amendment does not eliminate services, but ensures that services offered under the new system are administered in a more efficient manner. By working to eliminate duplicative, wasteful, fraudulent and abusive programs, this amendment will lower administrative costs and help streamline the greatly expanded government healthcare system.

Status: The manager's amendment adds a scaled down version of the amendment. The "compromise" would allow for a study on duplication in Division C grant programs only, and at the Secretary's discretion she could integrate the old program into the new and could potentially terminate the duplicate old program. However, the money would not go away; it would just go to the new or integrated program. If the programs are duplicative and cannot be integrated into existing programs, the Secretary is required to publish a rule terminating the duplicative programs. If Congress does not take a vote disapproving of those terminations, the duplicative programs would be eliminated.

Require Consultation with Specialty Colleges to Determine Best Practices by the CER Center and Commission (Murphy, R-PA)

Summary: This amendment, accepted in Committee, would require the CER Center and Commission to consult with specialty colleges and academies of medicine to determine the best medical practices in their field of specialty. It requires any recommendations of

best practices made by the Center or Commission to be founded on evidence-based medicine and not violate standards of clinical excellence.

Status: Portions of this amendment were included in H.R. 3962 under Sec. 1401(i) but substantially modified. In the new text, the Center and Commission are required to consult with “relevant expert organizations responsible for standards and protocols of clinical excellence” before recommending priorities or initiating research. It further provides that dissemination of research shall “take into consideration standards and protocols of clinical excellence.”

Create Licensure Pathway for Biosimilars (Eshoo, D-CA, Inslee, D-WA, and Barton, R-TX)

Summary: This amendment, accepted in Committee, would create a pathway for non-pioneer drug companies to manufacture “follow-on” biologics. Follow-on biologics are conceptually similar to generics in the prescription drug world, however, because of the complexities of the proteins involved in biologic drugs, the follow-on drug (or biosimilars) cannot be exact replicas, even though they achieve the same results. Currently these drugs are regulated in the same manner as regular prescription drugs, which does not reflect their unique nature. This amendment would create a regulatory frame work that would streamline the follow-on approval process and provide adequate protections for biologic drug innovators, allowing them to recoup their investments from the extremely expensive biologic drug development process.

Status: This amendment was included with changes in H.R. 3962 under Division C, Title V, Subtitle C, Part 2, Sec. 2575-2576.

The main differences are:

- Sec. 2575(a)(1) adds a new subsection “(6) Notification of Agreements” to the patent notices portion of the bill. It requires notice of business agreements between biosimilar product applicants and the reference product sponsor or between two biosimilar product applicants to be filed with the Assistant Attorney General and the Federal Trade Commission. It also creates a civil penalty of up to \$11,000 for each day someone violates these requirements. This new subsection gives the Assistant Attorney General and the FTC the authority to further define these rules, create new rules, or exempt certain groups from them.
- Sec. 2577 amends certain patent provisions related to follow-on biologics.

Require Cost Sharing and Pricing Transparency (Barton, R-TX; Burgess, R-TX; Green, D-TX)

Summary: The amendment, accepted in Committee, would bring a greater level of transparency to the healthcare market. This would be accomplished on two fronts, first by requiring all qualified health plans as determined by the new Health Choices Commissioner to disclose their cost-sharing provisions for coverage (including

deductibles, copayments, and coinsurance levels) to both individuals and care providers. Additionally, this amendment would require hospitals to disclose prices for the most common inpatient and outpatient hospital procedures. These prices would then be made available on the internet, empowering Americans with the informed choices they need to bring greater competition to the marketplace. In turn, this competition will bring lower prices, greater efficiency, and higher quality.

Status: The portion of the amendment requiring Qualified Health Benefit Plans to disclose cost-sharing was included in H.R. 3962 under Sec. 233. Most of the substance was kept (although some of the language was changed), and it appears to have been added to several other provisions. The portion of the amendment requiring hospital transparency was included under Sec. 1783 of H.R. 3962. The substance seems to have been kept, although the numbering and some of text was modified.

**Create Nationwide Program for Background Checks of Health Care Employees and
Apply National Correct Coding Initiative to Medicaid
(Schakowsky, D-IL and Upton, R-MI)**

Summary: This amendment, accepted in Committee, would create a nationwide program for national and state background checks on employees with direct patient access of certain long-term care facilities and provide federal matching funds to states to conduct this program. States who choose to participate in this program would establish methods to search state and federal databases, test ways to reduce duplicative fingerprinting, and develop a means to inform long-term care providers of criminal convictions that occur after the initial background check. The amendment would authorize the Secretary to identify and determine the methods of the National Correct Coding Initiative that are applicable to Medicaid and require Medicaid claims filed on or after October 1, 2010 to use these compatible coding procedures.

Status: The background check program was included under Sec. 1417 of H.R. 3962. The Correct Coding Initiative was included in H.R. 3962 under Sec. 1761 but modified to eliminate the subsection allowing an extension for a state law amendment to enact this program.

**Ensure Care Is Not Rationed by the Center for Quality Improvement
(Gingrey, R-GA)**

Summary: This amendment, accepted in Committee, would prevent the new “Center for Quality Improvement” created under this bill from developing methodologies for rationing care. Through this legislation, the Center would be charged with developing "new best practices" procedures for doctors to follow when administering care. This could place bureaucrats, not doctors and scientists, at the forefront of decision-making process for what care Americans can receive. England, which has centralized healthcare, has a similar agency called the National Institute for Health Clinical Excellence (NICE)

that has been used to limit access to breast cancer drugs for terminally ill women and restrict access to lifesaving procedures like dialysis. This amendment would ensure that America does not take such a callous and calculating approach to its healthcare.

Status: This amendment was included in H.R. 3962.

Ensure the Government Option Does Not Receive a Bailout (Stearns, R-FL)

Summary: This amendment, accepted in Committee, would prohibit the government plan from receiving a “bailout” from taxpayer funds. The anticipation of unlimited access to taxpayer funds is a recipe for irresponsible management and financial disaster. This is evident from the reckless decisions of federally backed companies, such as Fannie Mae and Freddie Mac during the mortgage crisis. This amendment will help protect the American taxpayer, government, and economy, from exposure to the dangerous new financial risks associated with this new government program; a socialization of risk should not be part of the government plan. Without access to a bailout, the government plan would have to hold enough capital to backup its financial requirements as all responsible private insurance companies do. This would eliminate one of the many statutory advantages afforded to the government plan that allows it to crowd private insurers out of the market.

Status: This amendment was included in H.R. 3962 in Sec. 322(b)(3) on page 216.

Allow Individuals on Medicaid with High Drug Costs to Hold Employment (Burgess, R-TX)

Summary: This amendment, accepted in Committee, would authorize states to create an option under Medicaid to allow individuals already on Medicaid that have annual prescription drug costs of over \$200,000 to hold employment and be productive members of society.

Status: This amendment was included in H.R. 3962 under Sec. 1738.

Ensure Behavioral Health Treatments Are Covered in the Essential Benefits Packages

(Doyle, D-PA, Deal, R-PA, and Engel, D-NY)

Summary: The one in 150 children that are diagnosed with autism today can, in fact, lead healthy, productive lives. But they need very specialized—and special—care. The most prominent among these therapies is something called “applied behavioral analysis”—or ABA. This amendment, accepted in Committee, would ensure that ABA is covered by the essential benefits package. Although under the bill, the Secretary may be able to

mandate ABA, and other behavioral treatments, but it is important to make very clear what the congressional intent is.

Status: This amendment was included in H.R. 3962 under Sec. 222(b)(7) on page 106.

Ensure that “Regardless of Specialty” Primary Care Physicians Are Included in a Qualifying Accountable Care Organization (Eshoo, D-CA and Rogers, R-MI)

Summary: This amendment, accepted in Committee, would expand eligibility for the Accountable Care Organization (ACO) demonstration to all physicians, regardless of specialty. For a cancer patient, their “primary care” physician will not be a family doctor, but rather an oncologist. This amendment would ensure that these doctors would be able to participate in the ACO demonstration.

Status: This amendment was included in H.R. 3962 under Sec.1301 adding Sec.1866E(b)(2)(B) to the Social Security Act on page 657.

Committee on Education and Labor

Protect the Private Right of Contract (Price, R-GA)

Summary: The amendment, accepted in Committee, protects patients’ ability to get the care they want from the doctors they choose. H.R. 3200 did not explicitly guarantee and preserve the private right to contract for medical services. In some countries with government-run health systems, questions have been raised as to whether private individuals could privately contract and pay for medical services that are covered under the government system. This amendment would clarify that nothing in the Act would prohibit any participant or beneficiary in a group health plan from entering into any contract or arrangement for health care services with any health care provider.

Status: This amendment was not included in H.R. 3962.

Exempt Small Businesses (Hunter, R-CA)

Summary: This amendment, accepted in Committee, allows businesses to apply to the Department of Labor for an exemption from the “pay or play” employer mandate, provided the employer can certify that compliance would result in job losses that negatively impact that company or the community it serves. The National Federation of Independent Businesses estimates that as many as 1.6 million jobs—more than 1 million of them among small businesses—would be lost as a result of H.R. 3200. Some small businesses might instead choose to reduce wages, limit inventory or, even worse, close their doors altogether. This amendment recognizes the difficult challenges that employers are currently facing, or may face in the future, and provides a reasonable opportunity to apply for a temporary exemption.

Status: This amendment was not included in H.R. 3962, although Sec. 416 authorizes a study on whether an “employer hardship exemption would be appropriate.”

Prohibit Religious Discrimination for Spiritual Care (Biggert, R-IL)

Summary: This amendment, accepted in Committee, would ensure that there is no religious discrimination for patients seeking spiritual care under plans in the new Health Insurance Exchange. It only requires that, if a patient is entitled to medical care under a minimal qualifying plan, as determined by the Secretary, the patient cannot be denied care solely on the basis of its religious or spiritual content. The definition of spiritual care is limited to what is recognized by the IRS as a deductible medical expense.

Status: This amendment was not included in H.R. 3962, although Sec. 501 creating Sec. 59B(c)(5) in the IRS code allows a religious conscience exemption from the tax on individuals who do not have acceptable insurance coverage.

Enroll Members of Congress in Government Plan (Wilson, R-SC)

Summary: This amendment, accepted in Committee, expresses the Sense of the House of Representatives that Members who vote in favor of the establishment of a public health insurance plan option run by the federal government (as well as senior officials in the Obama Administration) should forego their right to participate in the Federal Employees Health Benefit Program (FEHBP) and agree to enroll under the public option. The amendment is based on a basic principle – if it is good enough for the American people, it is good enough for Congress and the Administration supporting it.

Status: This amendment was not included in H.R. 3962. Sec. 330, however, does provide that Members of Congress “may enroll in the public health insurance option.”

Create Exception for Consumer-Directed Health Plans (Petri, R-WI)

Summary: This amendment, accepted in Committee, ensures that a group health plan that includes a consumer-driven arrangement, such as Health Savings Accounts with High Deductible Health Plans, would be considered “acceptable coverage” consistent with other grandfathered group health plans under the bill until Year 5 of the Act going into effect.

Status: The amendment was included in H.R. 3962 under Sec. 202(b). Although the language is slightly different, the substance is the same.

Protect TRICARE from “Pay or Play” Mandate (Wilson, R-SC)

Summary: This amendment, accepted in Committee, would exempt TRICARE, the military’s civilian-based health care program, from application of the bill’s “pay or play” mandate and other benefit mandates placed on employers in H.R. 3200. TRICARE is the health care program serving active duty service members, National Guard and Reserve members, retirees, their families, survivors and certain former spouses worldwide. As written, the bill’s broad definition of “employment-based health plan” appears to include TRICARE. As such, the Department of Defense would be subject to all of the bill’s mandates on employers in provision of health care to military personnel and their families.

Status: This amendment was included in H.R. 3962 under Sec. 100(c)(6)(C) on page 10.

Committee on Ways and Means

No Republican amendments were accepted.

RSC Staff Contacts: Emily Murry, emily.murry@mail.house.gov, (202)-225-9286;
Jessica Wagner, jessica.wagner@mail.house.gov, (202) 226-9717