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Repealing Erisa

One by one, President Obama's health-care promises are being exposed by the details of the actual legislation: Costs will explode, not fall; taxes will have to soar to pay for it; and now we are learning that you won't be able to "keep your health-care plan" either.

The reality is that the House health bill, which the Administration praised to the rafters, will force drastic changes in almost all insurance coverage, including the employer plans that currently work best. About 177 million people—or 62% of those under age 65—get insurance today through their jobs, and while rising costs are a problem, according to every survey most employees are happy with the coverage. A major reason for this relative success is a 1974 federal law known by the acronym Erisa, or the Employee Retirement Income Security Act.

Erisa allows employers that self-insure—that is, those large enough to build their own risk pools and pay benefits directly—to offer uniform plans across state lines. This lets thousands of businesses avoid, for the most part, the costly federal and state regulations on covered treatments, pricing, rate setting and so on. It also gives them flexibility to design insurance to recruit and retain workers in a competitive labor market. Roughly 75% of employer-based coverage is governed by Erisa's "freedom of purchase" rules.

Goodbye to all that. The House bill says that after a five-year grace period all Erisa insurance offerings will have to win government approval—both by the Department of Labor and a new "health choices commissioner" who will set federal standards for what is an acceptable health plan. This commissar—er, commissioner—can fine employers that don't comply and even has "suspension of enrollment" powers for plans that he or she has vetoed, until "satisfied that the basis for such determination has been corrected and is not likely to recur."

In other words, the insurance coverage of 132 million people—the product of enormously complex business and health-care decisions—will now be subject to bureaucratic nanomanagement. If employers don't meet some still-to-be-defined minimum package, they'll have to renegotiate thousands of contracts nationwide to Washington's specifications. The political incentives will of course demand an ever-more generous "minimum" benefit and less cost-sharing, much as many states have driven up prices in the individual insurance market with mandates. Erisa's pluralistic structure will gradually constrict toward a single national standard.

Yet a computer programming firm, say, and a grocery store chain have very different insurance needs, and in any case may not be able to afford the same kind and level of benefits. Innovation in insurance products will also be subject to political tampering. Likely casualties include the wellness initiatives that

give workers financial incentives to take more responsibility for their own health, such as Safeway's. Some politicians will claim that's unfair. High-deductible plans with health savings accounts are also out of political favor, therefore certain to go overboard. If you have one of those and like it, too bad.

The new Erisa regime will be especially difficult to meet for businesses that operate with very slim profit margins or have large numbers of part-time or seasonal workers. They may simply "cash out" and surrender 8% of their payroll under the employer-mandate tax. A new analysis by the Lewin Group, prepared for the Heritage Foundation, finds that some 88.1 million people will be shifted out of private employer health insurance under the House bill. If those people preferred their prior plan, well, too bad again.

The largest employers—though not all—may clear the minimum bar, at least at first. But in addition to the "health choices" administrative burden, the cost of labor will rise because the House guts another key section of Erisa. Currently, lawsuits about employee benefits are barred under the law, allowing large employers to avoid the state tort lotteries in disputes over coverage. No longer. As a gratuity to the trial bar, Democrats will now subject businesses to these liabilities in the name of health "reform."

So when Mr. Obama says that "If you like your health-care plan, you'll be able to keep your health-care plan, period. No one will take it away, no matter what," he's wrong. Period. What he's not telling the American people is that the government will so dramatically change the rules of the insurance market that employers will find it impossible to maintain their current coverage, and many will drop it altogether. The more we inspect the House bill, the more it looks to be one of the worst pieces of legislation ever introduced in Congress.

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