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HR 3200: IS THE DEVIL IN THE INTENT?

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HR 3200 -- America's Affordable Health Choices Act of 2009 – has stirred the American public like nothing else has in years. Most visible have been the town hall meetings scheduled by members of Congress to explain what's in the bill. But HR 3200 is more than 1000 pages long and some in Congress have admitted to not having read it. Congressional staffers and insiders may understand how the bill would reform health care but for anyone else who wants to be informed the bill presents a serious challenge.

We call attention in the following to just nine sections of HR 3200 which are especially problematical. No doubt there are others which may be even more convoluted. These problems call for careful study before any legislation finally emerges from Congress for President Obama's signature. We refer to the official July 14 version of the bill. The problem begins with the bill's objective.

- **Objective.** “To provide affordable, quality health care for all Americans and reduce the growth of health care spending, *and other purposes.*” Question: Why are the sponsors of HR 3200 not limiting the bill to health care affordability, access, quality, and spending?

- **Advance Care Planning Consultation (§1233).** “The level of treatment ... may range from an indication for full treatment to an indication to limit some or all or specified interventions [including] ... *the use of antibiotics; and ... artificially administered nutrition and hydration.*” Question: Before antibiotics, wasn't pneumonia called “the old man's friend” and weren't artificially administered nutrition and hydration at the heart of the Terri Schiavo case?

“... the Secretary [of Health and Human Services, Kathleen Sebelius] shall include quality measures on end of life care and advanced care planning that have been adopted or endorsed by a consensus-based organization, if appropriate. Such measures shall measure *both the creation of and adherence to orders for life-sustaining treatment.*” Question: To measure adherence to end of life care doesn't HHS need access to patient records?

“ ... the Secretary ... shall update the online version of the Medicare and You Handbook to *include ... any additional information as determined by the Secretary.*” Question: What special expertise does the Secretary have which warrants giving her a free hand in deciding the advance care planning information to be made available to Medicare recipients?

• **Comparative Effectiveness Research (§1401).** “The Secretary shall establish ... a Center for Comparative Effectiveness Research ... to conduct, support, synthesize research ... with respect to outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, *and managed clinically.*” Question: Will this research produce protocols to be strictly followed in patient care?

“The Center shall ... assist the users of health information technology focused on clinical decision support *to promote the timely incorporation of such findings into clinical practices and promote the ease of use of such incorporation.*” Question: Will this technology be used to track the compliance of health-care providers with the protocols to be followed in patient care?

• **Reduction in Medicaid DSH (§1704).** “No hospital may be defined or deemed as a disproportionate share hospital, or as an essential access hospital ... unless the hospital provides services ... without discrimination on the ground of race, color, national origin, creed, source of payment, status as a beneficiary ... *or any other ground unrelated to such beneficiary’s need for the services or the availability of the needed services in the hospital ...*” Note: A disproportionate share hospital treats significant populations of indigent patients; an essential access hospital provides local access to inpatient services to Medicare enrollees. Question: Will a hospital be denied reimbursement for patient care because it does not provide services which it regards as ethically objectionable?

• **Required Coverage for Preventive Services (§1711).** “The term ‘nurse home visitation services’ means home visits by trained nurses to families with a first-time pregnant woman, or a child (under 2 years of age), who is eligible for assistance under this title, *but only, to the extent determined by the Secretary* based upon evidence, that such services are effective in one or more of the following ... improving maternal or child health and pregnancy outcomes or increasing birth intervals between pregnancies.” Question: Will the Secretary decide what methods, including abortion, are to be used to assure the birth intervals between pregnancies which she decides are appropriate?

• **Public Health Investment Fund (§2002).** “There is established a ... ‘Public Health Investment Fund’ ... [where] amounts deposited into the Fund shall be derived from general revenues of the Treasury [and] ... *amounts in the Fund are authorized to be appropriated by the Committees on Appropriations of the House of Representatives and the Senate for carrying out activities under designated public health provisions.*” Note: \$88.7 billion is to be deposited in the fund between 2010 and 2019. Question: Will this Fund let members of Congress funnel monies to favored constituents?

“Amounts appropriated under this section, and outlays flowing from such appropriations, *shall not be taken into account for purposes of any budget enforcement procedures including allocations under section 302 (a) and (b) of the Balanced Budget and Emergency Deficit Control Action and budget resolutions for fiscal years during which appropriations are made*

from the Fund.” Question: Are Fund expenditures excluded from an accounting of the federal deficit?

In addition to pro-choice Kathleen Sebelius, two other Obama appointees are major health care reform architects. Nancy-Ann DeParle, most recently managing director of the private equity firm CCMP Capital, heads the White House Office of Health Reform. Ezekiel Emanuel, brother of White House chief of staff Rahm Emanuel and bioethicist on loan from the National Institutes of Health, is senior adviser on health policy in the Office of Management and Budget. Emanuel has authored *The Ends of Human Life: Medical Ethics in a Liberal Polity*, published by Harvard University Press, and book chapters “Ethics of Treatment: Palliative and Terminal Care” and “Why Not? Regulating How We Die.”

Question: In the end do the “other purposes” of HR 3200 include introducing “death with dignity” into health care reform?

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