Healthcare Policy Redux
A Tax Policy Analysis of the 2008 Presidential Candidates' Proposals

Introduction

During the 2008 Presidential Campaign, the candidates have debated proposals for solving America's health care challenges. But the real health care debate will happen after America elects a new President and Congress. During this upcoming debate, Congress should not simply follow the new President, but should lead by thoroughly considering the various proposals and select the very best ideas for improving our ailing health care system. As an aid to the debate, this article collates the proposals of not only the three remaining candidates, but also those who have dropped out, then analyzes them from a tax policy perspective.

The article first describes, via the statements of the candidates, the serious challenges facing America's health care system. Next, the article describes the three categories candidate ideas fall into: *Healthcare for All*, *Universal Healthcare*, and *Deregulated, Independent Healthcare*. Then the article analyzes each category using classical tax policy criteria. Finally, the article discusses the efficacy of each category and concludes with which one appears best from a tax policy perspective.

America's Health Care Challenges

During the 2008 Presidential Campaign, the candidates have said America faces four health care challenges. First, health care is becoming increasingly unaffordable. Seventeen percent of America's Gross Domestic Product is spent on health care.[1] [2] What's worse, "[h]ealth care spending is expected to double within the next decade."[3] Because health care is getting more and more expensive, so is health insurance. Health insurance premiums have risen 78 percent since 2001,[4] and 87 percent since 2000.[5] [6] [7] Employer-based insurance premiums

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[1] Mike Huckabee, *Mike Huckabee PRESIDENT, FAMILY. FAITH. FREEDOM., ISSUES, HEALTH CARE* unchecked ¶5, http://www.mikehuckabee.com/index.cfm?FuseAction=Issues.View&Issue_id=8 (accessed Dec. 17, 2007).
[2] Duncan Hunter, *Duncan Hunter for President `08, Core Principles*, "Health Care Reform" ¶2, http://www.gohunter08.com/inner.asp?z=4 (accessed Dec. 17, 2007).
[3] Barack Obama, *Obama '08, BARACK OBAMA'S PLAN FOR A HEALTHY AMERICA*, "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY" ¶1, http://www.barackobama.com/pdf/HealthPlanFull.pdf (accessed May 7, 2008).
[4] Joe Biden, *Biden, President '08, The Biden CARE Plan: Four Practical Steps Toward Health Care For All*, "Step Four: Encouraging Prevention and Modernization" ¶3, http://www.joebiden.com/assets/pdfs/health_care_plan.pdf (accessed Dec. 12, 2008).
[5] Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (4) LOWERING COSTS BY INCREASING COMPETITION IN THE INSURANCE AND DRUG MARKETS, Increasing competition" ¶2.

average over $12,000, which, for half of America, constitutes at least a quarter of their income.[8] Premiums have gone up four times as fast as wages.[9] [10] These premiums are the fastest growing expense for employers.[11] The pain is sharpened by increasing deductibles and co-pays, and significant limitations on maximum benefits.[12] For both major manufacturers and small businesses, health care costs are affecting competitiveness and job creation.[13] [14]

Second, many of our health care dollars are wasted. The cost of administering health care accounts for as much as 31 percent of all health care expenditures.[15] [16] [17] [18] Two-thirds of the overhead of private insurers is due to under-writing and marketing activities.[19] One in four health care laborers works in administration.[20] Health care administration "may be the fastest growing part of health care costs."[21] [22] Hospitals and insurers are inefficient due to continued use of obsolescent computer and paper systems.[23] [24] [25] "The outdated 'paper chase' . . . creates needless administrative waste recreating and transporting medical papers, performing duplicative testing, and

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[6] Hillary Clinton, *American Health Choices Plan, Quality, Affordable Health Care for Every American, Hillary for President* 7, http://www.hillaryclinton.com/feature/healthcareplan/americanhealthchoicesplan.pdf (accessed May 7, 2008) ("nearly double since 2000").
[7] John Edwards, *JOHN EDWARDS 08, UNIVERSAL HEALTHCARE THROUGH SHARED RESPONSIBILITY*, "AMERICA'S BROKEN HEALTH CARE SYSTEM, Spiraling Health Care Costs," http://johnedwards.com/about/issues/health-care-overview.pdf (accessed May 7, 2008) ("Over the past six years . . . nearly 90 percent").
[8] Clinton, *supra* n. 6, at 7.
[9] Obama, supra n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[10] Biden, *supra* n. 4, at "Step Four: Encouraging Prevention and Modernization" ¶3.
[11] *Id.*
[12] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[13] Clinton, *supra* n. 6, at 8.
[14] Obama, supra n. 3, at "QUALITY, AFFORDABLE & PORTABLE HEALTH COVERAGE FOR ALL" ¶1.
[15] Dennis Kucinich, *Defend The Constitution! Kucinich for President, A Healthy Nation* ¶3, http://www.dennis4president.com/go/issues/a-healthy-nation/ (accessed Dec. 17, 2007).
[16] Biden, *supra* n. 4, at "Step Four: Encouraging Prevention and Modernization, Requiring Uniform Billing and Claims."
[17] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Inconsistent Quality."
[18] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[19] Edwards, *supra* n. 7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, Third: New Health Care Markets, Promoting Affordable Care."
[20] *Id.* at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Inconsistent Quality."
[21] *Id.* at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (5) Improve Productivity with Information Technology."
[22] *See also* Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (4) LOWERING COSTS BY INCREASING COMPETITION IN THE INSURANCE AND DRUG MARKETS, Increasing competition" ¶2.
[23] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (5) Improve Productivity with Information Technology, Adopt Electronic Medical Records."
[24] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[25] *Id.* at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (3) LOWERING COSTS THROUGH INVESTMENT IN ELECTRONIC HEALTH INFORMATION TECHNOLOGY SYSTEMS."

claiming insurance benefits."[26] Hospitals deliver care inefficiently when uninsured individuals seek health care in emergency rooms because it is the only way they can access health care.[27] [28]

Third, America spends about twice as much on health care per person than other industrialized nations, but gets poorer quality.[29] [30] [31] Medical errors cause more than 100,000 deaths per year.[32] [33] Outdated computer and paper systems "cause[] tragic errors when doctors don't have access to patient information or misread handwritten charts."[34] "Prescription drug errors alone cost the nation more than $100 billion every year."[35] "Some doctors and hospitals are slow to adopt proven treatments. Better, more consistent performance could save 100,000 to 150,000 lives and $50 billion to $100 billion a year."[36] [37] Yet "[f]inding reliable information comparing doctors and hospitals on price and performance is harder than finding it for a new car."[38] And the health care workforce in the U.S. is aging and overburdened, and the system for training health care professionals is inadequate.[39] [40]

In addition, efforts to prevent health problems are lax.[41] [42] "Worker mobility discourages insurers from investing in care that would prevent later, larger costs for illnesses like diabetes and heart disease."[43] "Obesity . . . has doubled among adults over the last two decades."[44] Chronic diseases exacerbated by obesity, such as heart disease, diabetes, asthma, hypertension, and osteoarthritis, account for about 74 percent of private and 83 percent of

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[26] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (5) Improve Productivity with Information Technology, Adopt Electronic Medical Records."
[27] *See Id.* at "AMERICA'S BROKEN HEALTH CARE SYSTEM, 45 Million Uninsured Americans" ¶2.
[28] *See* Clinton, *supra* n. 6, at 6.
[29] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Inconsistent Quality."
[30] Biden, *supra* n. 4, at "Step Four: Encouraging Prevention and Modernization, Increasing Comparative Effectiveness Research."
[31] Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY" ¶1.
[32] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (1) Help Doctors Deliver the Best Care, Prevent Medical Errors."
[33] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[34] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (5) Improve Productivity with Information Technology, Adopt Electronic Medical Records."
[35] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[36] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE" ¶1.
[37] *See also* Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY" ¶2.
[38] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (3) Empower Patients through Transparency."
[39] Biden, *supra* n. 4, at "Step Four: Encouraging Prevention and Modernization, Meeting the Need For New Health Professionals, Nurses."
[40] Obama, *supra* n. 3, at "PROMOTING PREVENTION & STRENGTHENING PUBLIC HEALTH, (3) WORKFORCE."
[41] *See* Clinton, *supra* n. 6, at 5.
[42] *See* Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶4.
[43] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Fragmented System of Insurance" ¶1.
[44] Biden, *supra* n. 4, at "Step Four: Encouraging Prevention and Modernization, Focusing on Prevention" ¶1.

public health care spending.[45] [46] [47] "One in 3 Americans—133 million—have a chronic condition."[48] One in every 150 children is affected by autism.[49]

The fourth, and perhaps most emphasized challenge, is that our health care is unfairly distributed. There are between 45 and 47 million uninsured.[50] [51] [52] [53] This is "nearly one in five non-elderly residents."[54] "An estimated 18,000 uninsured people die every year because they lack access to care."[55] Medical bills cause over half of America's personal bankruptcies.[56] [57]

Nine million children are uninsured.[58] [59] "Nearly 30 percent of young adults are uninsured . . . because they are more likely to work part-year or part-time."[60] Nearly five million people between 55 and 64 are uninsured, many because the risks associated with their age and health make the premiums too expensive.[61] Minorities, women, and rural populations receive poorer health care.[62] "The uninsured rate for African Americans is one-third higher and that of Hispanics is over twice the uninsured rate for white Americans."[63] "People of color are more likely to be diagnosed with cancer and less likely to receive timely and effective treatment. Children of African-American mothers are twice as likely to die within their first year."[64] "Women [] have higher health needs but lower

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[45] Biden, *supra* n. 4, at "Step Four: Encouraging Prevention and Modernization, Focusing on Prevention" ¶1.
[46] Clinton, *supra* n. 6, at 5.
[47] Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (2) LOWERING COSTS BY ENSURING PATIENTS RECEIVE AND PROVIDERS DELIVER QUALITY CARE, HELPING PATIENTS, Support disease management programs."
[48] Obama, *supra* n. 3, at "PROMOTING PREVENTION & STRENGTHENING PUBLIC HEALTH" ¶2.
[49] Bill Richardson, *BILL RICHARDSON PRESIDENT, Issues: Health Care*, "Autism," http://www.richardsonforpresident.com/issues/healthcare/ (accessed May 7, 2008).
[50] Edwards, *supra* n. 7, at "UNIVERSAL HEALTH CARE THROUGH SHARED RESPONSIBILITY" ¶2 (45 million).
[51] Kucinich, *supra* n. 15, at ¶1 (46 million).
[52] Clinton, *supra* n. 6, at 1 (47 million).
[53] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶2 (47 million).
[54] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, 45 Million Uninsured Americans" ¶1.
[55] *Id.*
[56] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶3.
[57] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, 45 Million Uninsured Americans" ¶2.
[58] Biden, *supra* n. 4, at "Step One: Cover All Children" ¶1.
[59] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶2.
[60] Clinton, *supra* n. 6, at 7.
[61] Biden, *supra* n. 4, at "Step Two: Access for Adults, (2) Medicare Buy-In For People Aged 55-64" ¶1.
[62] Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (2) LOWERING COSTS BY ENSURING PATIENTS RECEIVE AND PROVIDERS DELIVER QUALITY CARE, ENSURING PROVIDERS DELIVER QUALITY CARE, Tackling disparities in health care."
[63] Clinton, *supra* n. 6, at 7.
[64] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (4) Reduce Health Disparities."

incidence of paid work that offers insurance."[65] Insurance companies often discriminate against people who need insurance the most: those with pre-existing conditions or high-risk factors.[66] [67]

There are even "tens of millions of workers with coverage who fear they could be one pink slip away from losing their health coverage."[68] "Workers lose insurance when they lose or change their jobs."[69] "Eighty percent of the uninsured are in working families."[70] "Skyrocketing health care costs are making it increasingly difficult for employers, particularly small businesses, to provide health insurance to their employees."[71] "[E]mployers are scaling back benefits as the cost of health insurance and health care rises."[72] "Since 2000 . . . small firms offering coverage has fallen from 57 percent to 45 percent."[73] "Three million fewer Americans receive health insurance coverage through their employers now compared to five years ago."[74] And companies that have retained insurance have scaled coverage back significantly.[75]

Proposed Solutions

There is broad consensus among both Democratic and Republican candidates regarding proposed solutions aimed at curbing waste and improving quality. Both parties call for more attention to preventative care.[76] [77] Many candidates would have the health care system move from a paper to an electronic system.[78] [79] Both parties would improve coordination between multiple health care providers caring for a single, chronically ill patient in order to realize efficiencies and prevent mistakes.[80] [81] And the idea of supporting research and creating a repository for "best

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[65] Clinton, *supra* n. 6, at 7.
[66] Biden, *supra* n. 4, at "Step Two: Access for Adults, (3) Reform The Insurance Industry" ¶1.
[67] *See* Edwards, *supra* n. X at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Fragmented System of Insurance" ¶2.
[68] Clinton, *supra* n. 6, at 1.
[69] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Fragmented System of Insurance" ¶1.
[70] Obama, *supra* n. 3, at "Lowering health care costs and ensuring affordable, high-quality health care for all" ¶2.
[71] *Id.*
[72] Biden, *supra* n. 4, at "Step Three: Reinsurance For Catastrophic Cases" ¶1.
[73] Clinton, *supra* n. 6, at 8.
[74] Obama, *supra* n. 3, at "QUALITY, AFFORDABLE & PORTABLE HEALTH COVERAGE FOR ALL" ¶1.
[75] *See* Clinton, *supra* n. 6, at 8.
[76] *E.g.* Clinton, *supra* n. 6, at 5.
[77] *E.g.* John McCain, *McCain, On the Issues, Straight Talk on Health System Reform*, "A Specific Plan of Action: Lowering Health Care Costs" bullet 2, https://www.johnmccain.com/Informing/Issues/19ba2f1c-c03f-4ac2-8cd5-5cf2edb527cf.htm (accessed May 7, 2008).
[78] *E.g. Id.* at "A Specific Plan of Action: Lowering Health Care Costs" bullet 5.
[79] Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (3) LOWERING COSTS THROUGH INVESTMENT IN ELECTRONIC HEALTH INFORMATION TECHNOLOGY SYSTEMS."
[80] *E.g.* Clinton, *supra* n. 6, at 5-6.
[81] *E.g.* McCain, *supra* n. 77, at "A Specific Plan of Action: Lowering Health Care Costs" bullets 2 & 3.

practices" regarding medical treatments is generally supported.[82] [83] Consensus may seem apparent only because details are lacking on how candidates would implement such changes. But if consensus is real, legislation relating to these aims should succeed politically during the next administration, if not before.

In contrast, proposals regarding the financing and distribution of health care generate great disparity, not only between Republicans and Democrats, but also between candidates within each party. Two Democrats would combine all taxpayers into a single insurance risk pool, which would directly pay the health care costs of all Americans. The other Democrats would open group insurance membership to everyone by adding to and opening up America's existing health insurance risk pools. Republicans would foster marketplace competition through deregulation of the insurance industry and by reducing overall utilization of medical services. The following sections categorize these three approaches. The remainder of the article focuses on these categories.

Healthcare for All

Mike Gravel would implement a single-payer system using health care vouchers.[84] Dennis Kucinich would implement House Bill 676,[85] which ends health care financing through private health insurance, and requires participating health care providers to be non-profit entities.[86] Under this bill, private insurance premiums and all out-of-pocket expenses would be eliminated. Instead, public funds would pay all health care costs for every individual at no costs beyond taxes. This type of system is commonly referred to as a "single-payer" system because government gathers health insurance premiums paid through taxes from all citizens into a single risk pool from which the government pays all claims.[87] House Bill 676 subsumes Medicare, Medicaid, and SCHIP and is called "Medicare for All."[88] To avoid confusion with the existing Medicare program, this article refers to this category of proposals as "*Healthcare for All*."

Under House Bill 676, health care institutions such as hospitals would receive a monthly lump sum to cover operating expenses. Some individual health care providers would receive a negotiated fee for service;

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[82] *E.g.* McCain, *supra* n. 77, at "A Specific Plan of Action: Lowering Health Care Costs" bullets 2 & 3.
[83] *E.g.* Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY, (2) LOWERING COSTS BY ENSURING PATIENTS RECEIVE AND PROVIDERS DELIVER QUALITY CARE, ENSURING PROVIDERS DELIVER QUALITY CARE, Comparative effectiveness reviews and research."
[84] *See* Ctr. Am. Progress Action Fund, *Center for American Progress Action Fund, Events, Transcript: Sen. Mike Gravel* ¶4, http://www.americanprogressaction.org/events/healthforum/gravel_transcript.html (accessed May 7, 2008).
[85] Kucinich, *supra* n. 15, at ¶4.
[86] *See United States National Health Insurance Act*, H.R. 676, 109th Cong. (Feb. 8, 2005) (as introduced).
[87] *See generally* Wikipedia, *Single-payer health care*, http://en.wikipedia.org/wiki/Single-payer_health_care (accessed May 7, 2008).
[88] Kucinich, *supra* n. 15, at ¶4.

however, others would receive a negotiated salary if employed by health care institutions receiving a monthly lump sum, by Health Maintenance Organizations (HMOs), or if they elect to do so.

Savings realized by instituting public health care, new taxes, and elimination of some tax expenditures would pay for the system.[89] Cutting profits, marketing, underwriting, and other overhead costs associated specifically with private insurance would constitute most of the expected savings. Bulk purchases of drugs, medical supplies, and medical equipment would increase savings. In addition to savings, three new taxes would be levied: a 3.3 percent payroll tax, a .25 percent stock transfer tax, and a tax surcharge on the wealthiest taxpayers: five percent on the wealthiest five percent of taxpayers, and ten percent on the wealthiest one percent. Elimination of insurance premiums and out-of-pocket expenses would largely offset these new taxes. Finally, unspecified corporate subsidies as well as the Bush tax cuts of 2001 and 2003 would come to an end.

Universal Healthcare

The other Democratic candidates would alter the existing system to cover all Americans to some degree. Some would require all Americans to join a public or private insurance group;[90] [91] others would require only some to join.[92] [93] Democrats would accommodate this requirement by expanding and creating new public insurance programs based either on the Federal Employees Health Benefits Program (FEHBP) or Medicare.[94] [95] They would expand access to Medicaid and the State Children's Health Insurance Program (SCHIP).[96] One would expand access to Medicare.[97]

To further accommodate this newly required health insurance, Democrats would require employers to buy or support insurance for their employees, providing them tax credits to help offset the costs.[98] Likewise, needy individuals would receive a tax credit[99] or subsidy[100] to offset the cost of health insurance premiums. To assure

[89] John Conyers, Jr., *John Conyers, Jr., Financing H.R. 676*, http://www.house.gov/conyers/news_hr676_2.htm (accessed Dec. 30, 2007).
[90] *E.g.* Clinton, *supra* n. 6, at 2.
[91] *E.g.* Chris Dodd, *Chris Dodd, President 2008, Health Care for All: The Dodd Plan, The Dodd Health Plan,* bullet 3, http://chrisdodd.com/node/1924 (accessed May 7, 2008).
[92] *E.g.* Obama, *supra* n. X at "QUALITY, AFFORDABLE & PORTABLE HEALTH COVERAGE FOR ALL, (4) MANDATORY COVERAGE OF CHILDREN."
[93] *E.g.* Biden, *supra* n. 4, at "Step One: Cover All Children" & "Step Two: Access for Adults."
[94] *E.g.* Clinton, *supra* n. 6, at 1.
[95] *E.g.* Edwards, *supra* n.7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, Third: New Health Care Markets."
[96] *E.g.* Obama, *supra* n. 3, at "QUALITY, AFFORDABLE & PORTABLE HEALTH COVERAGE FOR ALL" ¶2.
[97] Biden, *supra* n. 4, at "Step Two: Access for Adults, (2) Medicare Buy-In For People Aged 55-64" ¶2.
[98] *E.g.* Clinton, *supra* n. 6, at 2.
[99] E.g. *Id.*

public insurance affordability, Democrats would prohibit private insurers from excluding risky individuals from private insurance groups;[101] otherwise private insurers would "cherry pick" less risky individuals, thereby relegating greater risks and expense on public groups.

Only Hillary Clinton offers financing analysis.[102] She estimates her program would cost $110 billion. Nearly half would come from reversing some of the Bush tax cuts of 2001 and 2003. Another third would come from modernizing the health care system, including improvements to health information technology, treatment effectiveness, and chronic disease management. The rest she projects would come from abolishing excessive Medicare payouts and reimbursements to hospitals for treating the uninsured, reducing drug costs through generic competition and price negotiations, and limiting tax exemptions on employer contributions for health benefits for individuals making over $250,000.

While John Edwards does not offer a price tag for his program, he says up to $160 billion—more than the estimated cost of Clinton's plan—could be saved by upgrading health information technology.[103] Also, he says creating regional Health Care Markets for selling public and private insurance would reduce costs through economies of scale, reductions in administrative overhead, and improvements in health care quality.[104]

Deregulated, Independent Healthcare

In general, Republicans would alter the existing system by deregulating the insurance industry and by encouraging individuals to move to private, non-employment-based insurance. Mitt Romney would offer federal incentives to deregulate and reform state health insurance markets to end state mandates on insurance companies.[105] Other Republicans would avoid state mandates by allowing businesses and individuals to buy health insurance across state lines.[106] To encourage individuals to move to private, non-employment-based insurance,[107] Republicans

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[100] *E.g.* Obama, *supra* n. 6, at "QUALITY, AFFORDABLE & PORTABLE HEALTH COVERAGE FOR ALL, OBAMA'S PLAN TO COVER THE UNINSURED, Subsidies."
[101] *E.g. Id.* at "Guaranteed eligibility."
[102] Clinton, *supra* n. 6, at 11.
[103] Edwards, *supra* n. 7, at "AFFORDABLE AND ACCOUNTABLE HEALTH CARE, (5) Improve Productivity with Information Technology."
[104] Edwards, *supra* n. 7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, Third: New Health Care Markets."
[105] Mitt Romney, *MITT ROMNEY, TRUE STRENGTH FOR AMERICA'S FUTURE, Press Releases, Policy Briefing: Expanding Access To Affordable Health Care*, "The Romney Plan: Six Action Steps" step 1, http://www.mittromney.com/News/Press-Releases/Policy_Briefing_Health_Care (accessed Nov. 23, 2007).
[106] *E.g.* McCain, *supra* n. 77, at "Making Health Insurance Innovative, Portable And Affordable" ¶1.
[107] Huckabee, *supra* n. 1, at checked ¶8.

would alter the tax code to allow individuals to deduct[108] [109] [110] [111] from income or receive a tax credit[112] for health insurance premiums and possibly other health costs. In addition, some Republicans would simplify use of Health Savings Accounts (HSAs).[113] No Republican candidate has offered estimates on what the proposed tax deductions or credits would cost in foregone tax receipts.

Tax Policy Analysis

Equity

A policy is equitable horizontally if those with the same incomes are charged equivalent taxes.[114] A policy is equitable vertically if it produces no advantage to higher income individuals over lower income individuals.[115] Regarding horizontal equity, this section first shows how the three proposals would affect the existing tax bias toward individuals who receive compensation in the form of health benefits. Second, this section shows how the proposals interact with the present discrepancy between payments for medical care by those with insurance and those without it who do not pay their medical bills. Third, regarding vertical equity, this section describes how proposals offering subsidies or tax credits are superior to those offering tax deductions.

The Bias Towards Employer-Paid Health Benefits

Under the present system, employees may exclude health benefits paid as compensation from their income for tax purposes;[116] however, employees must include monetary compensation they use to buy those same health benefits.[117] Thus, workers who receive health benefits as compensation are taxed less than workers who receive money as compensation, even if they use that money to buy the same health benefits. This clearly inequitable policy has been recognized by many candidates.

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[108] Huckabee, *supra* n. 1, at unchecked ¶3.
[109] Muckraker Report, *An Interview with Presidential Candidate Congressman Ron Paul* ¶40, http://www.muckrakerreport.com/id447.html (June 28, 2007).
[110] Mitt Romney, *MITT ROMNEY, TRUE STRENGTH FOR AMERICA'S FUTURE, Press Releases, Policy Briefing: Expanding Access To Affordable Health Care*, "The Romney Plan: Six Action Steps" step 3, http://www.mittromney.com/News/Press-Releases/Policy_Briefing_Health_Care (accessed Nov. 23, 2007). However, Mitt Romney would limit deductions to those owning "at least catastrophic insurance."
[111] Rudy Giuliani, *RUDY, EMPOWER PATIENTS AND FAMILIES NOT THE GOVERNMENT*, "Expand Choice Through Tax Code Reform", http://www.joinrudy2008.com/commitment/indepth/8/ (accessed Nov. 23, 2007).
[112] McCain, *supra* n. 77, at "Making Health Insurance Innovative, Portable And Affordable" ¶2.
[113] *E.g. Id.* ¶4.
[114] *See* Joseph T. Sneed, *The Criteria of Federal Income Tax Policy*, 17 Stan. L. Rev. 567, 577-79 (1965).
[115] *See Id.*
[116] 26 U.S.C. § 106 (2006) ("[G]ross income of an employee does not include employer-provided coverage under an accident or health plan.").
[117] 26 U.S.C. § 61(a)(1) (2006).

Healthcare For All would end this employee tax exclusion since health benefits would no longer be paid by employers. Instead, all health expenses would be paid by the government out of the general fund. Most of the taxes that would go into that fund would come from a new 3.3 percent payroll tax. For workers, such a tax would eliminate the inequity between those compensated with health benefits and those not receiving such benefits, since all would be taxed the same 3.3 percent.

For non-working taxpayers, the present inequity would be reversed. Because these people would no longer be taxed for the current health benefit exclusion and they would not owe the new 3.3 percent payroll tax, their health benefits would be paid for by workers. Certainly the tax surcharge on the wealthiest five percent would mitigate this fact for the wealthiest. And the new .25 percent stock transfer tax would likely draw funds from many wealthier, non-working individuals. However, one could avoid paying for health care by carefully arranging non-stock market investments such as rental real estate, bonds, or debt instruments. Thus, while Kucinich's plan largely solves the present inequity caused by allowing employees to exclude health benefit compensation from income, his plan would create a new reversed inequity benefiting savvy individuals who would surely take advantage of it.

Universal Healthcare, as proposed by the other Democratic candidates, requires all employers to support insurance for their workers. Thus, employers not now providing health benefits would be required to do so. Since the present inequity harms only individuals who receive no health benefits from an employer, requiring all employers to provide health benefits will shrink the group suffering this inequity. However, whether this truly ends the inequity depends on the details of what will be required of employers.

The Democrats would require employers to help pay for employee health insurance. Clinton says, "If you are happy with your current health care coverage," then "Keep Your Existing Coverage (through employer or individual coverage)."[118] But what constitutes "health insurance" would have to be defined. Otherwise, nominal "health insurance" might satisfy the requirement: imagine a very cheap policy with a $10 million deductible, or one with a lifetime limit of $1. While these examples are extreme to illustrate the point, minimal requirements would need to be defined. Because employers not now providing insurance would likely provide only the minimum if required to do so, the extent to which newly procured, minimal policies compare with already existing policies would determine how much the present inequity would be mitigated. The lower the requirements, the less the mitigation of the inequity and visa versa.

[118] Clinton, *supra* n. 6, at "The American Health Choices Plan: Expanding Choice and Ensuring Affordable Coverage" (this flow chart is between the front cover and page 1).

For non-working taxpayers, this inequity would likely increase. Because Democrats would require employers to provide health benefits and would provide new tax credits to help pay for them, this health benefit tax expenditure would swell. Taxes or national debt would increase, so non-working taxpayers would pay even more for health benefits they do not receive. Additionally, Democrats, excepting Barack Obama, would amplify the inequity by requiring non-working taxpayers to buy health insurance with taxed dollars.

Deregulated, Independent Healthcare takes direct aim at this inequity. John McCain would eliminate the bias toward employer-sponsored health insurance by replacing the exclusion of employer-provided health benefits with a tax credit which both employees and non-employees could take.[119] Because McCain's proposed tax credit is limited to $2500 for individuals and $5000 for families, those employees who now receive tax relief in excess of those limits would pay more taxes. However, this would be horizontally equitable since individuals, both employee and non-employee, would have to pay tax on health benefits not covered by the credit. It is also vertically equitable since wealthier individuals would most likely be the ones paying the new taxes.

Rudy Giuliani would allow those without employer paid health benefits to deduct up to a $15,000 for such benefits.[120] Mike Huckabee would make "health insurance tax deductible for individuals and families as it now is for businesses."[121] Ron Paul would make all medical expenses tax deductible.[122] Romney would deduct "qualified" medical expenses, but only if the taxpayer owns "at least catastrophic insurance."[123] Allowing taxpayers to deduct non-employer paid health benefits would mitigate the present inequity, but only to the extent of any limitation on that deduction. To fully eliminate the existing inequity, exclusions for both employer and non-employer benefits would need to be equally limited or unlimited. Otherwise, the inequity, albeit smaller, would still exist.

For instance, using Giuliani's proposed $15,000 deduction, most people would be able to deduct their full health insurance costs since the average health insurance premium for a family is $12,106.[124] But, those with premiums in excess of the $15,000 limit would continue to suffer the inequity since employees could deduct premiums in excess of $15,000, but non-employees could not. With rising premiums, if the limitation is not indexed

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[119] Kevin Sack & Michael Cooper, *McCain Health Plan Could Mean Higher Tax*, New York Times (May 1, 2008) (available at http://www.nytimes.com/2008/05/01/us/politics/01mccain.html).
[120] Giuliani, *supra* n. 111, at "EMPOWER PATIENTS AND FAMILIES, NOT THE GOVERNMENT."
[121] Huckabee, *supra* n. 1, at unchecked ¶ 3.
[122] Muckraker Report, *An Interview with Presidential Candidate Congressman Ron Paul* ¶40, http://www.muckrakerreport.com/id447.html (June 28, 2007).
[123] Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 3.
[124] Kaiser Fam. Found. & Health Research And Educ. Trust, *Employer Health Benefits: 2007 Annual Survey* 1, http://www.kff.org/insurance/7672/upload/76723.pdf (Sept. 2007).

to inflation, more and more people could be affected by the inequity as time passed. Also, the continuing inequity would adversely affect families with children more than childless families, since premiums would be higher for those with children but the deduction limit would be the same for both. To fully eliminate the bias toward employer-sponsored health insurance, non-employees should be able to exclude their health benefits in exactly the same way as employees now exclude employer provided health benefits – sans limitations. Or, employees should no longer be allowed to exclude unlimited employer provided health benefits.

Those Who Pay For Those Who Don't

The Emergency Medical Treatment and Active Labor Act (EMTALA) requires emergency rooms to treat whomever comes through their doors.[125] However, federal funds do not fully compensate for these services,[126] so hospitals must raise prices to offset their losses. Consequently, those who actually pay hospitals, either through insurance reimbursement or through direct payments, essentially pay for individuals who access emergency rooms for their health care, but do not pay. This is a tax issue because some who pay for these more expensive hospital services do so using insurance for which they receive a tax exclusion as an employee. More expensive hospital services drive up premiums, which increases this tax expenditure. In addition, expenses paid by other public health programs, such as Medicare and Medicaid are greater, which means more tax revenue must be collected to pay for these programs. The equity issue is that two individuals making the same income—one who does not pay hospital bills, and the other who does—owe the same tax, but one gets free hospital care and the other does not.

Healthcare for All would eliminate this problem, since all citizens of the same income would be equally taxed and all citizens of the same income would receive equal health benefits. Individuals would certainly receive disparate benefits because their health concerns would differ. But this discrepancy seems less a matter of fairness than whether all would receive the same potential for health care at the same expense.

Universal Healthcare, except Obama and Joe Biden, would require all individuals to carry health insurance. Doing so would mitigate the problem, but only to the extent of the minimal health insurance requirements. Some individuals would still access emergency rooms and not pay to avoid deductibles, co-pays, co-insurance, or amounts that exceed maximum limits. Required insurance will only solve the problem if all incentives

[125] 42 U.S.C. § 1395dd (2006).
[126] Am. Acad. of Pediatrics, *Overcrowding Crisis in Our Nation's Emergency Departments: Is Our Safety Net Unraveling?*, 114 Pediatrics 878, 879 (2004).

to use emergency rooms for free care are eliminated. Thus, for required insurance to solve this problem, it would need to be truly universal: no deductibles, no co-pays, no co-insurance, and no maximum limits.

Deregulated, Independent Healthcare largely ignores this issue. However, Romney says, "Currently, taxpayers subsidize 'free care' for millions of uninsured Americans who receive treatment when they need it."[127] According to Hillary Clinton, not having to pay "disproportionate share hospital" (DSH) payments, which partially reimburse some hospitals for charity health care, could save $7 billion a year.[128] [129] Romney says he would "end subsidized care for 'free riders' by redirecting these existing federal and state resources to help the low-income uninsured purchase their own private health insurance." It is unclear if Romney is referring to these DSH payments, or other public program resources such as Medicaid or SCHIPS. But if Romney wishes to eliminate the DSH payments, either hospitals would more vividly suffer losses incurred from non-paying emergency room users, or EMTALA would have to be repealed so that the uninsured could no longer access emergency rooms.

Simply eliminating DSH payments without rescinding EMTALA would change the equity issue very little. The DSH payments now coming from the treasury would cease, but hospitals would simply increase their prices to make up for the lost DSH payments. Consequently, instead of all taxpayers paying for these costs, only those who actually pay hospital costs would pay. Repealing EMTALA would solve the equity issue to the extent that hospitals stopped allowing the uninsured access to their emergency rooms. But the cost of doing so would be unconscionable. Perhaps this unconscionable action would provide $7 billion a year to insure the poor, but there will be "free riders" always – do we just let them die on the streets? Surely this is not what Romney means.

Credits or Subsidies vs. Deductions

Since an overarching problem in health care is that individuals cannot afford it—in particular, they cannot afford health insurance premiums—all candidates have suggested ways to help individuals pay for health insurance premiums.

Kucinich, Obama, and possibly Republican Tom Tancredo would directly subsidize health care. Through *Healthcare for All*, Kucinich would pay the health costs of all citizens through direct subsidies from the treasury.[130]

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[127] Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 2.
[128] Clinton, *supra* n. 6, at 9.
[129] *See generally* Robert E. Mechanic, *National Health Policy Forum, Medicaid's Disproportionate Share Hospital Program: Complex Structure, Critical Payments*, http://www.nhpf.org/pdfs_bp/BP_MedicaidDSH_09-14-04.pdf (Sept. 14, 2004).
[130] *See United States National Health Insurance Act*, H.R. 676, 109th Cong. (Feb. 8, 2005) (as introduced).

Obama would provide direct subsidies for individuals who cannot afford health insurance premiums.[131] Tancredo says he "would not rule out federal incentives or limited subsidies to make sure families who have fallen on hard times are not without coverage."[132]

Other Democrats and Republican McCain would provide tax credits to help pay health insurance premiums. Clinton and Edwards would provide a refundable tax credit to middle and lower income individuals only,[133] [134] while McCain would provide a health insurance tax credit to everyone.[135] Other Republicans, as discussed above, would offer tax deductions.[136] [137] Romney would offer this tax deduction only if the taxpayer carries "at least catastrophic health insurance."[138]

These proposals to assist citizens in purchasing health insurance raise two separate issues. One regards practicality and is discussed in that section. The other is related to equity and can be summed up simply: a tax deduction is more valuable to a taxpayer from a higher tax bracket than it is to a taxpayer from a lower tax bracket, while a tax credit offers the same value to all taxpayers who can fully utilize it.[139] For example, if Jane and Dick can each deduct $15,000 in health insurance premiums, but Jane is in the 35 percent bracket, while Dick is in the fifteen percent bracket, then for Jane, the deduction is worth 35 percent of $15,000, or $5250, while, for Dick, the deduction is worth fifteen percent of $15,000, or $2250. Jane gets $3000 more for her deduction than Dick does. On the other hand, if each can take a $3500 tax credit against the purchase of health insurance, then the wealthy do not benefit more than the less-wealthy. It is not vertically equitable for the wealthier to receive a larger benefit from a deduction. Thus, tax credits are preferable to tax deductions from an equity standpoint.

Reduced Economic Inequality

Joseph Sneed said tax policy should check economic inequality "in order to provide the young with more equality of opportunity, to achieve a dispersion of private economic power that will tend to advance freedom, to

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[131] Obama, *supra* n. 3, at "QUALITY, AFFORDABLE & PORTABLE HEALTH COVERAGE FOR ALL, (1) OBAMA'S PLAN TO COVER THE UNINSURED, Subsidies."
[132] Tom Tancredo, *TANCREDO08 FOR PRESIDENT, For A Secure American!, On the Issues, Healthcare* ¶2 http://teamtancredo.org/stands/ (accessed Nov. 9, 2007).
[133] Clinton, *supra* n. 6, at 7.
[134] Edwards, *supra* n. 7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, Second: Government Responsibility, Offer New Health Insurance Tax Credits."
[135] McCain, *supra* n. 77, at "Making Health Insurance Innovative, Portable And Affordable" ¶2.
[136] *E.g.* Giuliani, *supra* n. 111, at "EMPOWER PATIENTS AND FAMILIES, NOT THE GOVERNMENT."
[137] *E.g.* Huckabee, *supra* n. 1, at unchecked ¶3.
[138] Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 3.
[139] *See* Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 Harv. L. Rev. 705, 720-25 (1970).

moderate the covetousness of the poor and the arrogance of the rich, and to minimize the tension between the political theory of democracy and the economic imperatives of capitalism."[140] Whether his goals are desirable or not must be judged according to one's values; however, these suggested checks likely reflect predominant values in America. Assuming that reduction of economic inequality is desirable, one must still wonder "to what extent ought economic inequality be reduced?"[141] The response from each individual would likely differ; "agreement on the responses is impossible;"[142] the matter is political. Thus, analysis regarding this criterion focuses on economic redistribution: who would "win" and who would "lose"?

Healthcare for All would clearly redistribute wealth from the well-off to the not-so-well-off. Since all health care, both preventative and curative, would be paid by taxes, the winners would be the working poor—those citizens with too much money to be on Medicaid, but too little to afford insurance or to pay their medical bills directly. Though they would pay a new 3.3 percent FICA-like employment tax,[143] the health care benefits would likely exceed this charge.

Clearly, for-profit health insurance providers would be among the losers because they would cease to exist.[144] Also, wealthier Americans would be among the economic losers. The wealthiest five percent of citizens would bear the additional costs of a new surtax.[145] Likewise, because about 85 percent of stock is owned by the wealthiest ten percent of individuals,[146] the proposed .25 percent stock transfer tax would fall heavily on the wealthy. In addition, *Healthcare for All* would be financed in part by rescinding the Bush tax cuts of 2001 and 2003,[147] which overwhelmingly benefited the wealthier over the less wealthy.[148] Thus, rescinding the Bush tax cuts would redistribute wealth from the wealthier to the less-wealthy. Companies that supply drugs, medical equipment, or other medical supplies would likely lose profit through leveraged negotiation for bulk purchases.[149]

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[140] Sneed, *supra* n. 114, at 583.
[141] *Id.* at 582.
[142] *Id.*
[143] John Conyers, Jr., *John Conyers, Jr., Financing H.R. 676*, http://www.house.gov/conyers/news_hr676_2.htm (accessed Jan. 27, 2008).
[144] *United States National Health Insurance Act*, H.R. 676, 109th Cong. § 103 (Feb. 8, 2005) (as introduced).
[145] Conyers, *supra* n. 143.
[146] Edward Wolff, *The Wealth Divide: The Growing Gap in the United States Between the Rich and the Rest*, 24 Multinational Monitor 11, 13 (No. 5, May 2003) (available at http://www.multinationalmonitor.org/mm2003/03may/may03interviewswolff.html).
[147] Conyers, *supra* n. 143.
[148] *See* William G. Gale & Peter R. Orszag, *Bush Administration Tax Policy: Distributional Effects*, 95 Tax Notes 1559 (2004).
[149] *See* Conyers, *supra* n. 143.

Less clear is how medical service workers and health care consumers would fare. Providing health care to all would likely create higher demand for medical services.[150] At the same time, doctors and other health care providers would have to negotiate with the government to determine the prices they would be allowed to charge for their services.[151] Assuming that demand would outstrip supply, and given that no market control would prevent health care consumers from accessing the health care system, it is unclear how demand for health services would be controlled. Economics would dictate that either health care workers would have to supply more services, or that health care services would have to be rationed. In the first scenario, health care workers would be the losers. In the second scenario, health care consumers would be the losers. In the latter case, it is unclear how decisions would be made regarding who would get what. That decision-making process would determine how many and which health care consumers would be losers. The U.S. Supreme Court has acknowledged that HMOs were created to ration health care services;[152] perhaps *Healthcare for All* would use an HMO-like model for rationing.

Universal Healthcare under Clinton or Edwards, but not Obama, would require individuals to purchase health insurance. Depending on the requirement details, losers may include those who presently pay the bulk of their medical bills with Health Savings Accounts (HSAs) and who insure only for catastrophic medical costs. Using this health care strategy, an individual purchases an inexpensive catastrophic health plan, then puts into a tax-free HSA account the money saved by not purchasing an expensive comprehensive plan. Typical medical expenses are paid out of the HSA account, tax free; more extreme medical expenses are paid by the catastrophic plan. Because most individuals pay far less in actual medical expenses than they would pay for comprehensive medical insurance premiums, this strategy allows healthier individuals to recoup money they might otherwise spend on insurance premiums.

However, because these very savings are no longer paid into a comprehensive plan as premiums, they are not available to pay for riskier, less-healthy individuals. Clinton has emphasized that individuals can keep their present coverage. But that will surely be true only if one's existing insurance meets some required minimum of coverage. Otherwise, people would purchase nominal insurance simply to satisfy the health insurance requirements. Depending on the details, a catastrophic policy may not satisfy the minimums. Assuming that one important purpose in requiring health insurance is to assure widespread dispersal of risk, and given that the HSA/catastrophic

[150] *See* Amy Finkelstein, *The Aggregate Effects of Health Insurance: Evidence from the Introduction of Medicare*, http://www.nber.org/papers/w11619 (Sept. 2005).
[151] *United States National Health Insurance Act*, H.R. 676, 109th Cong. § 202(b) (Feb. 8, 2005) (as introduced).
[152] *Pegram v. Herdrich*, 530 U.S. 211, 212 (2000).

health care strategy defeats risk-spreading by allowing individuals to "cherry pick" themselves out of comprehensive plans, it seems likely that the Clinton and Edwards plans would require these individuals to buy in to comprehensive health plans. Edwards would require businesses to provide *comprehensive* insurance to their employees.[153] Perhaps *all* individuals would be required to have this comprehensive insurance? If so, then individuals using the HSA/catastrophic strategy will be required to pay more into the health care system.

By definition, requiring 47 million individuals to purchase health insurance coverage will increase demand for health insurance. Typically, one might expect this to redistribute wealth from these 47 million individuals to the health insurance industry. But because companies will be required to offer insurance even to the riskiest and least-healthy individuals, and because a public health insurance plan will also be offered, it is anything but clear whether the insurance industry will suffer or thrive. Edwards has suggested that health insurance companies might ultimately be replaced by a single government payer.[154] However, one could also imagine a scenario where citizens are dissatisfied with a poorly-run governmental program. In that case, vast new stores of money would be funneled through the health insurance industry.

The other effect of *Universal Healthcare*, even where not required, such as in Obama's proposal, is that new tax expenditures are going to drain money away from the U.S. Treasury. Only the details of the taxing or borrowing that Congress must do to pay for these new tax expenditures will determine their redistributive qualities. Democrats would finance new tax expenditures by rescinding the Bush tax cuts of 2001 and 2003.[155] Given the budget deficit, this would "pay" for increased tax expenditures by borrowing less money. Clinton would limit the income tax exclusion for employer-paid health benefits for households that make over $250,000.[156] Both ideas would redistribute wealth from higher to lower income individuals.

McCain would replace the exclusion for employer-paid health benefits with a limited tax credit. Because it is limited, higher income individuals paying high premiums would pay more taxes.[157] Consequently, McCain's proposal would redistribute wealth from higher to lower income individuals. Other Republicans, would offer new tax incentives to persuade people to purchase health insurance. And, like the Democrats, these tax incentives will

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[153] Edwards, *supra* n. 7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, First: Business Responsibility."
[154] *Id.* at "Third: New Health Care Markets, Choice between Public and Private Insurers."
[155] *E.g.* Clinton, *supra* n. 6, at 11.
[156] *Id.*
[157] *See* Kevin Sack & Michael Cooper, *McCain Health Plan Could Mean Higher Tax*, New York Times (May 1, 2008) (available at http://www.nytimes.com/2008/05/01/us/politics/01mccain.html).

drain money away from the U.S. Treasury. These others would have to raise taxes or borrow to pay for the new tax expenditures. Only details would determine the redistributive qualities of any such taxing or borrowing.

Perhaps the most striking redistributive affect of Republican proposals is that wealth would be transferred from the sickly to the healthy. Most Republicans would either deregulate state health insurance markets, or allow individuals to purchase insurance from another state. Mitt Romney has suggested that the latter plan has constitutional implications. To be clear, federal regulation of the insurance industry is not unconstitutional: the U.S. Supreme Court has ruled that the interstate commerce clause gives Congress power to regulate the insurance industry.[158] However, through the McCarran-Ferguson Act of 1945, Congress limits federal regulation, by requiring that state regulations can only be overruled by specific federal legislation intended to overrule state regulations. To allow interstate health insurance sales, Congress would have to either specifically forbid states from preventing such sales, or Congress would have to repeal or amend the McCarran-Ferguson Act of 1945.[159]

Regardless of the form, both Republican proposals have the same effect. The effect of deregulating state health insurance markets would be to repeal rules requiring insurance plans to cover less-healthy individuals or certain illnesses. The effect of allowing individuals to buy health insurance across state lines is to allow people to buy out-of-state insurance plans which never required coverage of less-healthy individuals or certain illnesses. Both plans allow insurance companies to "cherry pick" healthier individuals, putting them into groups having less expensive premiums. The negative consequence is that less-healthy individuals would be left behind to either form groups with higher premiums, or worse, get no insurance at all. The overall result is that equivalent insurance would cost less for healthy individuals than for unhealthy individuals. This is particularly troublesome when considered in light of the fact that wealthier people tend to be healthier people.[160] It may very well be that the real consequence of the Republican plan is that the rich would get richer, and the poor would stay sick.

Practicality

Subsidies vs. Credits or Deductions

The candidate's proposals to assist citizens in purchasing health insurance via subsidies, credits, or deductions raise two separate issues. The one involving equity was discussed in that previous section. The other, discussed here, involves practicality.

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[158] *United States v. South–Eastern Underwriters Ass'n*, 322 U.S. 533 (1944).
[159] *See* 15 U.S.C.A. § 1011 *et seq.* (2007).
[160] *See* Craig Evan Pollack, *et al.*, *Should Health Studies Measure Wealth?: A Systematic Review*, 33 Am. J. of Preventive Med. 250 (2007).

To recap the various candidates positions as described above, Kucinich and Obama would use direct subsidies; the rest, both Democrats and Republicans, would use either tax credits or deductions. Subsidies are direct expenditures, while credits and deductions are tax incentives. The former has a budget for which taxes must be collected. The later has no budget and requires no collection of taxes; however, it does reduce the potential tax revenue by foregoing taxes that would otherwise be collected. These foregone revenues are tax expenditures.[161]

In *Tax Incentives as a Device for Implementing Government Policy: a Comparison with Direct Government Expenditures*,[162] Stanley S. Surrey discusses the respective pros and cons of using direct expenditures versus tax incentives to implement government programs. He says three main arguments are typically raised in favor of using tax incentives rather than direct expenditures. First, tax incentives enlist the private sector, especially business, to participate in solving social problems. Second, governmental complexity is reduced since less bureaucracy is necessary to implement the program. And third, private sector decision-making is inherently better than the centralized governmental decision making.

However, Surrey points out that one "could design [a direct expenditure program] that provides more flexibility for private decisionmaking and less scope for government control."[163] Further, he claims that the lack of complexity of most tax incentives merely "reflects lack of scrutiny and foresight when the tax incentives were planned or considered."[164] All in all, he thinks these virtues of tax incentives are "falsely claimed."[165]

Surrey goes on to describe defects in tax incentives. First, though tax incentives are created to incentivize taxpayers to behave in a certain way, many of them would behave that way regardless of the tax incentive.[166] Second, as was described in the equity section, tax incentives can be inequitable by offering a larger benefit to the wealthy, or by offering no benefit to those who pay no taxes.[167] Third, by design, tax incentives distort the marketplace and resource allocation.[168] And fourth, tax incentives not only cause loss of tax revenue, but also hide the expenditure of those foregone revenues.[169]

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[161] Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2008* 285 (2008).
[162] Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 Harv. L. Rev. 705 (1970).
[163] *Id.* at 718.
[164] *Id.* at 719.
[165] *Id.* at 715.
[166] *Id.* at 719-20.
[167] *Id.* X at 720-25.
[168] *Id.* at 725.
[169] *Id.* at 725-26.

Surrey asks, "what is lost if the tax incentive technique is used?"[170] The first loss is that those Congressional committees with expertise on the social issue in question never see tax incentive bills because they instead go to the House Ways and Means committee and the Senate Finance Committee. The second loss is that the Internal Revenue Service (IRS) administers tax incentives; thus, the administrative organizations which would normally handle the social issue in question must coordinate with the IRS. This confounds budgeting since the IRS accounts for money that would normally be included in the administrative organization's budget. This confusion then compounds the difficulties of national budgeting.[171] Surrey says, "a resort to tax incentives greatly decreases the ability of the Government to maintain control over the management of its priorities."[172] He also laments that tax incentives muddle an already complex tax system.[173]

So pragmatically, Surrey's observations generally suggest that Kucinich and Obama are right, and that we should use subsidies rather than tax incentives to help people pay for health care. But that ignores the Mr. Hyde of practicality: politics.

Political Order

Subsidies vs. Credits or Deductions, Continued

Surrey's next question is, "What is to be gained?" The answers "are essentially political in nature."[174] To illustrate the first such political gain, Surrey quotes Professor Henry Aaron, who said the success of tax incentives "derives from a peculiar alliance among conservatives, who find attractive the alleged reduction in the role of government that would follow from extensive use of tax credits, and liberals anxious to solve social and economic problems—by whatever means—before it is too late."[175]

Surrey believes direct expenditures could be as simple and un-bureaucratic as tax incentives.[176] However, even he observes, "In many cases, it is true, direct expenditure programs are probably overstructured and the urging of tax incentives is a reaction to, and a valid criticism of, badly designed expenditure programs. The cure lies of course in better designed expenditure programs."[177] But will Congress design better expenditure programs? Surrey

[170] Surrey, *supra* n. 161, at 727-28.
[171] *Id.* at 728-31.
[172] *Id.* at 731.
[173] *Id.* at 731-32.
[174] *Id.* X at 732.
[175] *Id.* at 732 (quoting the testimony of Professor Henry Aaron before Congress).
[176] *See Id.* at 718-19.
[177] *Id.* at 717.

admits "that many of the existing tax incentives are less structured than direct expenditure programs."[178] The reality is that recent Congresses have been too disparate to muster enough political cohesion and energy to design good expenditure programs.

The increasing use of tax incentives, on the other hand, reflects the reality that it takes more energy to create than to destroy. Creating new social institutions aimed directly at helping citizens with their health care would require immense political will and energy. Conversely, destroying—by further eroding the tax base through health care tax incentives—would take less energy. If Congress remains the very partisan institution it has proven to be over the last several years, it seems unlikely that enough political will and energy could be mustered to create institutions for direct expenditures. In this scenario, it seems more likely that Congress would change health care by offering tax deductions or credits. However, in the event that "liberals anxious to solve social and economic problems" happen to swell into Congress and the Presidency in 2009, perhaps there would be enough political cohesion and energy to implement well-designed direct tax expenditures.

Transparency – You spend WHAT on health care?

Surrey says, "Once the public is fully aware of the amounts involved and can weigh expenditure costs against benefits received by the nation, the tax incentives will be found wanting in many respects."[179] This implies that the public is not fully aware of the costs of tax expenditures. Perhaps the statement should go a bit further and say not only that a fully aware nation would find the benefits of tax expenditures wanting, but also that once the nation found the benefits wanting, it would actually *do* something about it. Becoming fully aware of the costs of tax expenditures as well as the paucity of the benefits would create political energy for change.

In 2008, employees will not pay an estimated $160,190,000,000 in taxes because IRC §106 allows them to exclude employer-paid health benefits from income.[180] That number is by far the largest tax expenditure in the American Budget; the deduction for mortgage interest, the next biggest tax expenditure, is a little more than half the size. To gain some much needed perspective, that number would pay nearly 26 percent of Social Security's 2007 costs of $622,800,000,000.[181] That number would have largely paid America's 2007 budget deficit of

[178] Surrey, *supra* n. 161, at 719.
[179] *Id.* at 733-34.
[180] Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2008* 296 (2008).
[181] *See* Social Security Administration, *Performance and Accountability Report, Fiscal Year 2007* 34, http://www.ssa.gov/finance/2007/Full_PAR.pdf (Nov. 7, 2007).

$163,000,000,000.[182] If we divided that number between every man, woman, and child in America, each would get $528.32.[183]

That last number is particularly interesting when compared with the amount most people actually spend on health care in a given year. In 2002, fifty percent of Americans spent less than $664 in medical expenses annually and 80 percent spent $3,219 or less.[184] Yet, in that same year, the average health insurance premium for an individual was $3060.[185] That means that for almost 80 percent of the population, health insurance premiums cost more than actual medical expenses. For 50 percent of the population, insurance premiums cost more than four times actual medical expenses.

This excess beyond actual medical expenses pays for security: confidence that money will be available should an employee be among the needy twenty percent. However, if all things were equal, one might expect a healthy individual, particularly one among the healthiest 50 percent, to choose enhanced wages over employer-provided health benefits if the employer offered such a choice.[186] That choice would allow the healthy individual to save wages previously paid for health insurance premiums in excess of actual medical expenses. With some of those savings, the individual could enjoy the same security, formerly provided by the employer, by purchasing a relatively inexpensive catastrophic health insurance policy.

So why don't healthy individuals forego health benefits and opt for increased wages instead? It could be as simple as the difference between receiving health benefits paid with pre-tax dollars from an employer, versus having to pay medical expenses and catastrophic insurance with increased, but taxed wages. One survey found that when employees were asked if they would rather get employer paid health insurance or wages increased by the amount the employer had to pay for such health insurance, they would rather get the health insurance.[187] Then when asked if they would make the same choice should the employer increase their wages by more than the cost of the health

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[182] *See* United States Government Accountability Office, *Report to the Secretary of the Treasury, FINANCIAL AUDIT, Bureau of the Public Debt's Fiscal Years 2007 and 2006 Schedules of Federal Debt* 3, http://www.gao.gov/new.items/d08168.pdf (Nov. 2007).
[183] U.S. Census Bureau, *U.S. Census Bureau, Population and Household Economic Topics*, "Population Clocks," http://www.census.gov/population/www/ (accessed Jan. 10, 2008) (at 11:52am PST, the U.S. Population was estimated at 303, 208, 717).
[184] Mark W. Stanton, *The High Concentration of U.S. Health Care Expenditures*, 19 Research In Action 1, 2 (Margaret Rutherford ed., Agency for Healthcare Research and Quality, 2006) (available at http://www.ahrq.gov/research/ria19/expendria.pdf).
[185] Kaiser Fam. Found. & Health Research And Educ. Trust, *Employer Health Benefits: 2002 Annual Survey* 1, http://kaiserfamilyfoundation.org/insurance/3251.pdf (accessed May 7, 2008).
[186] *See* 26 U.S.C. § 125 (2006).
[187] Paul Fronstin, *The Tax Treatment of Health Insurance and Employment-Based Health Benefits*, 294 EBRI Issue Brief 1, 10 (June 2006) (available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_06-20061.pdf).

insurance premiums, more employees would chose extra wages. So the tax exclusion on employer-paid health benefits plays a role.

But maybe the question is more complicated. After all, recent legislation made it possible for employees to deduct from income their own medical costs by using a Health Savings Account (HSA) in conjunction with catastrophic health insurance.[188] Yet, adoption of this strategy has been slow. So it cannot only be that tax preferences induce individuals to retain employer-paid health benefits.

For both government and taxpayer, a tax should be convenient and easy to collect.[189] However, if assessment and collection become too convenient, a political issue arises. Joseph Sneed said, "the elimination of a substantial portion of the pain in the payment of taxes reduces the ability of the people to determine the relative merits of alternative courses of action."[190] He continued, "Such ability must exist in large measure in any democratic society; excessive concealment through indirect taxes and deceptive propaganda are indicia of undemocratic regimes."

But how is this issue relevant to U.S. Treasury-subsidized, employer-paid health insurance premiums? One might reasonably argue that employees pay an indirect tax when they pay their health insurance premiums. Through these, "the government (1) reduces overall health expenditures, (2) decreases its own health care costs, (3) promotes a more equitable distribution of costs among health care recipients, and (4) decreases the number of Americans forced into poverty due to catastrophic illness."[191] If health insurance premiums are viewed as an indirect tax, one can then view the tax incentive offered through IRC §106 as a tool of practicality used to make payment of this larger health insurance tax easier to pay. In addition, allowing employers, through IRC §162, to deduct their payments of employee health insurance premiums in lieu of wages makes it more convenient for the taxpayer to pay. This is true not only because the employer does not have to bear an extra expense, but also, and more importantly, because the employee sees these health benefits not as foregone wages, but rather as fringe benefits. The system hides from the employee that he is being induced to purchase insurance with part of his wages.

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[188] 26 U.S.C. § 223 (2006).
[189] Sneed, *supra* n. 161, at 573.
[190] Joseph T. Sneed, *Taxation*, 11 J. Pub. Law 3, 12-13 (1962).
[191] Bradley W. Joondeph, *Tax Policy and Health Care Reform: Rethinking the Tax Treatment of Employer-Sponsored Health Insurance*, 1995 BYU L. Rev. 1229, 1231.

This arrangement conceals the indirect tax from employees so well that it "reduces the ability of the people to determine the relative merits of alternative courses of action."[192] One might argue that the only reason the existing system is sustained is that employees don't know how much wages they forego by accepting health benefits instead. If they did, one might reasonably expect that healthier employees would clamor for enhanced wages rather than for health insurance benefits. This system has become so ingrained in the fabric of our society, that it won't be easily changed. One survey found that employees preferred employer-supplied health insurance because they feared that, if left to their own devices, they would make poor choices in selecting their own health insurance, or worse, would not purchase it at all.[193] Indeed, the fear of losing employer-based health insurance was one reason President Bill Clinton's Health Security Act of 1993 failed politically.[194] Consequently, in 2008, Hillary Clinton is quick to assure employees: "Keep Your Existing Coverage (through employer or individual coverage)."[195]

Healthcare for All would resolve this issue completely: by its nature there would be no doubt that taxes would be paying for all medical care. The indirect tax would be made direct and spread appropriately through the progressive income tax system.

Universal Healthcare would not only continue this indirect tax, but would expand its use by mandating that employers pay for employee health insurance. In addition, some Democrats would create new tax incentives through deductions or credits to help small businesses and individuals purchase health insurance. Such tax incentives would create new tax expenditures with all the inherent lack of political accountability discussed above. Only Barack Obama would use direct expenditures to help small businesses and individuals with health premiums. Since direct spending programs appear on the budget, Obama's programs would be more politically accountable to the public.

During the 1993 attempts at reforming health care, Republicans fomented fear among workers that they would lose their employer-paid health insurance.[196] Ironically, it is now the Republicans who would encourage employees to move way from employment-based health insurance. Most would allow non-employees to deduct

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[192] Sneed, *supra* n. 189, at 12.
[193] Fronstin, *supra* n. 186, at 10.
[194] *See generally* Paul Starr, *The Hillarycare Mythology, Did Hillary doom health reform in 1993? It's time to get the facts straight about the Clinton plan and why compromise failed. Here's the real story.*, http://www.princeton.edu/~starr/articles/articles07/Starr-HillarycareMyth-10-07.pdf (Oct. 2007).
[195] Clinton, *supra* n. 6, at "The American Health Choices Plan: Expanding Choice and Ensuring Affordable Coverage" (this flow chart is between the front cover and page 1).
[196] *See generally* Star, *supra* n. 193.

health insurance premiums.[197] Also, Republicans would expand use of Health Savings Accounts (HSA) which allow individuals to deduct medical expenses paid as long as those individuals also maintain a catastrophic health insurance plan.[198] McCain would even eliminate the exclusion of employer-paid health benefit compensation.[199]

Most employees spend far less on yearly medical expenses than their employers pay for them in annual health insurance premiums. If employers could instead pay these premiums to an employee's HSA, then most employees would have enough money in their HSA to pay for normal medical expenses in a typical year without having to rely on insurance. In a high-expense year, the HSA would be adequate to cover the deductible for the catastrophic health insurance plan, which would cover the remaining expenses. Such a strategy is now available via Internal Revenue Code §223. However, it is still not possible to deduct health insurance premiums and the deductible on the catastrophic health insurance must be high. Republicans would like to encourage use of HSAs through tax incentives,[200] and by simplifying them,[201] perhaps by lowering the deductible limit for catastrophic insurance.

Expanded use of HSAs might finally induce healthy employees to clamor for enhanced wages rather than continued employer-provided health insurance. As employees move away from employer-paid health insurance benefits into individually owned HSAs, the indirect tax of employer-paid health benefits would wane. As healthy individuals leave employment-based insurance groups, only less healthy individuals would remain. As premiums rose to offset the increased risk of less healthy groups, a negative feedback loop would cause the healthiest of the less healthy to leave employment-based insurance groups as well. More and more employers would likely drop health coverage for employees.[202] Consequently, employment-based groups could collapse altogether. Less healthy workers would no longer be able to obtain insurance through their employer and would be unable to obtain health insurance in the private market because of their health status. So fewer workers would be able to afford insurance.

Despite these negative consequences, moving employees away from employment-supported health insurance would remove the indirect tax of employment-based health insurance premiums. But Republicans would

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[197] *E.g.* Giuliani, *supra* n. 111, at "EMPOWER PATIENTS AND FAMILIES, NOT THE GOVERNMENT."
[198] *E.g.* Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 3.
[199] *See* Kevin Sack & Michael Cooper, *McCain Health Plan Could Mean Higher Tax*, New York Times (May 1, 2008) (available at http://www.nytimes.com/2008/05/01/us/politics/01mccain.html).
[200] *E.g.* McCain, *supra* n. 77, at "Making Health Insurance Innovative, Portable And Affordable" ¶4.
[201] *E.g.* Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 3.
[202] *See generally* David M. Cutler & Richard J. Zeckhauser, *Adverse Selection in Health Insurance*, in *Frontiers in Health Policy Research* vol. 1, 1 (Alan M. Garber ed., MIT Press 1998).

use tax incentives to induce people to move to HSAs. So *Deregulated, Independent Healthcare* would not be completely transparent because tax incentives are less politically accountable than direct expenditures.

Free Market Compatibility

Free market compatibility means "the tax system should accomplish its appointed objectives neatly and efficiently and disturb the workings of the market no more than necessary."[203] To this end, one should "select for taxation items which . . . do not have a high rate of substitution." Also, "those taxes which purport to reach all, or nearly all, the items within the class subjected to tax are less intrusive than a more selective tax which limits its reach to only a portion of such items." However, "a selective tax may sometimes achieve an allocation more closely related to the ideal than will a more general one." In particular, specifically taxed items are "frequently helpful to the effort to reduce economic inequality."

Efficient Capital Markets Hypothesis (ECMH) suggests that markets are efficient only if all information is available to their participants. If all information is available, then price will reflect that information. However, if insiders hold more information than other market participants, that information can be exploited for profit.[204]

According to Joseph P. Newhouse, "medical care markets differ from the standard assumptions that economists make about markets."[205] These differences reflect a lack of information on the part of the health care consumer. "First, consumers do not know if or when they will fall ill." They only know that if they do become ill, they will need medical care which may be expensive. This risk, a combination of the unknown and the known, creates a market for health insurance. "Second, in many cases consumers are poorly informed about how or what medical services may benefit them." Thus, health service consumers must trust health care providers, as their agents, not to take advantage of them. "Third . . . [consumers] may be ill informed about the quality of the services that they actually receive, or they may be unable to observe that quality. In some cases they may be receiving the services under a general anesthetic!" In addition, the health care consumer cannot assess whether a poor outcome was due to low quality medical care or merely the underlying medical condition. Thus, the health care consumer must rely on others, through professional and public regulation, to assure quality. Finally, health insurance companies likely have better information about whether the insured is likely to need health care services or not. This superior information can lead to adverse selection, especially among individuals and small groups, and even

[203] Joseph T. Sneed, *The Criteria of Federal Income Tax Policy*, 17 Stan. L. Rev. 567, 586-90 (1965).
[204] *See generally* Eugene F. Fama, *Efficient Capital Markets: A Review of Theory and Emperical Work*, 25 J. of Fin. 383 (1970).
[205] Joseph P. Newhouse, *Pricing the Priceless, A Health Care Conundrum* 3-5 (MIT Press 2002).

market failure. Because the health care market cannot rely on the usual free market tool of information, professionalism and government regulations have traditionally protected health care consumers from exploitation and poor quality.

Healthcare for All would undoubtedly have profound effects on the existing health care market. The most obvious effect would be the elimination of the health insurance industry.[206] Also, all institutional health care providers, such as hospitals, would be required to convert to not-for-profit status.[207] Kucinich claims America's for-profit system effectively rations health care and that his plan would improve upon this situation.[208] The change proposed by Kucinich is so far-reaching that it would be impossible to accurately speculate on the full extent of the effects it would have on the existing health care market. But taking health care financing out of the free market would spread risk optimally and would lower administrative costs if properly managed.

Universal Healthcare would likely have a less dramatic effect on the existing health care market. Because employers would be required to carry or help pay for employee health insurance, more employees would likely obtain health insurance policies. Also, new tax incentives would be offered to encourage individuals to purchase health insurance. These actions would increase the demand for private health insurance. On the other hand, a new public insurance plan would be made available to individuals and small employers. Depending on how people respond to this newly-available public plan, this could decrease demand for private health insurance. John Edwards has even said, "Over time, the system may evolve toward a single-payer approach if individuals and businesses prefer the public plan."[209]

Another market effect of *Universal Healthcare* is that demand, and thus prices, for medical services would increase. In 1977, Martin Feldstein used an economic model to show that sharply rising hospital costs between 1958 and 1977 were caused by quality improvements demanded because more and more people had health insurance.[210] Though the Rand Health Insurance Experiment (Rand Experiment)[211] conducted after Feldstein's paper suggested

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[206] *See* OnTheIssues.org, *Democratic primary debate on Univision: on Health Care*, "Dennis Kucinich: Fake debate if we talk about maintaining present system," http://www.ontheissues.org/Archive/2007_Univision_Dems_Health_Care.htm (accessed May 7, 2008).
[207] *United States National Health Insurance Act*, H.R. 676, 109th Cong. § 103 (Feb. 8, 2005) (as introduced).
[208] Laura Gilcrest, *United Press International, CostRx: Kucinich's not-for-profit plan* ¶ 19, http://www.upi.com/Health_Business/Analysis/2007/04/25/costrx_kucinichs_notforprofit_plan/ (Apr. 25, 2007).
[209] Edwards, *supra* n. 7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, Third: New Health Care Markets, Choice between Public and Private Insurers."
[210] *See* Martin Feldstein, *Quality Change and the Demand for Hospital Care*, 45 Econometrica 1681 (1977).
[211] *See generally* Joseph P. Newhouse & The Insurance Experiment Group, *Free for All? Lessons from the RAND Health Insurance Experiment* vii (Harvard U. Press 1993).

otherwise, more recent work[212] questions the conclusions drawn from the Rand Experiment, and concludes that, indeed, large scale increases in health insurance can lead to rising demand and prices for medical services.

The overarching problem is that health care is unaffordable; yet by increasing the number of people insured, the Democrats would likely increase the cost of health care. One possible way to avoid such increased demand would be to require cost-sharing via deductibles, co-insurance, and co-pays. The Rand Experiment showed that such cost-sharing had a dramatic effect on utilization of health care services, but had less effect on the price of health care after utilization is initiated.[213] But most existing policies already require cost-sharing. One could increase the amount of cost-sharing, but this would raise the expense of health care by increasing out-of-pocket expenses. Because insuring great numbers would likely lead to greater health care demand, and because cost-sharing would not fully mitigate this new demand, the Democratic proposal is more likely to exacerbate the overarching problem of affordability than to resolve it.

Republican candidate Duncan Hunter says, "Today, when a consumer decides to make a purchase, for example a new car, they are empowered through easy access to information to find the best deal."[214] He continues, "Sadly, this same level of information is denied those seeking to purchase health care." The idea of providing information that will allow consumers to shop for quality health care is called for by several Republicans.[215] [216] [217] Despite the unusual character of information as it regards the health care market, Republicans would pursue a solution to the problem of affordability by treating the health care market like any other. That is, consumers would shop.

To this end, Republicans would like to see health insurance owned by individuals rather than provided as a fringe benefit by employers.[218] In addition, they would encourage individuals to self-insure through the use of HSAs.[219] Presumably, by directly controlling spending on both health insurance and medical spending, consumer shopping would drive quality up and price down as it does in a typical market. Certainly, the Rand Experiment supports the notion that people utilize health care services less when they perceive that the money to pay for those

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[212] *See* Amy Finkelstein, *The Aggregate Effects of Health Insurance: Evidence from the Introduction of Medicare*, http://www.nber.org/papers/w11619 (Sept. 2005).
[213] Newhouse, *supra* n. 210, at 338-39.
[214] *See* Hunter, *supra* n. 2, at "Make Informed Health Care Choices Through Public Disclosure."
[215] Giuliani, *supra* n. 111, at "EMPOWER PATIENTS AND FAMILIES, NOT THE GOVERNMENT" ¶3.
[216] McCain, *supra* n. 77, at "A Specific Plan of Action: Lowering Health Care Costs" bullet 10.
[217] Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 6.
[218] *E.g.* Huckabee, *supra* n. 1, at unchecked ¶6-7.
[219] *E.g.* Romney, *supra* n. 110, at "The Romney Plan: Six Action Steps" step 3.

services is coming from their own pockets. But it also shows that the sick and poor fail to access the health care system even when it was necessary.[220] If enough people fail to seek preventative health care, this could drive health care prices up as those individuals seek out health care inefficiently, for instance, through hospital emergency rooms.

But more likely, is that the Republican plan could lead to a market failure in the health insurance industry. Employment groups mitigate the possibility of moral hazard because they are created for a purpose other than insuring health: they spread risk across a group that contains both healthy, low-risk individuals and less-healthy, high-risk individuals. An insurance company can offer health insurance to such a group because the healthier individuals will pay, through premiums, for the less-healthy individuals. But if healthy individuals begin to leave the work group, then only less-healthy, high-risk individuals are left. Consequently, premiums will rise in order to reflect the higher costs of the less-healthy group. As a consequence of the rising premiums, the healthier of the less-healthy group will leave. Whereupon an even less-healthy group will remain. The cycle continues until a "death spiral" ends the insurance company's incentive to offer any plan at all.[221] [222] If this pattern is repeated across a large swath of employers, employment-based groups would no longer prevent moral hazard, so insurance companies would no longer offer health insurance products to these groups. Consequently, only catastrophic policies would remain marketable.

Republicans might argue that this is the epitome of free market economics. While such policies might drive down the cost of health insurance and health care, it would likely also leave even more people out in the cold than are shivering there today. Those who work might be able to afford health care, and those with lots of money would continue to get higher quality health care. But such a policy begs the question of who will pay for the uninsured. Who will pay for the catastrophic costs of those who cannot afford to pay for their medical bills? They could be left on the streets, or the government could pick up the tab. Either way, America will pay, either through social depression, increased taxes, or reimbursements to hospital emergency rooms via increased hospital bills.

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[220] Joseph P. Newhouse, *Consumer-Directed Health Plans and the RAND Health Insurance Experiment*, 23 Health Affairs 107, 108 (No. 6, 2004)
[221] Joseph P. Newhouse, Pricing the Priceless 109-15 (MIT Press 2002).
[222] *See generally* J.D. Kleinke, *A Final Underwriting Death Spiral*, 13 Managed Care Magazine (No. 1, 2004) (available at http://www.managedcaremag.com/archives/0401/0401.plan2009_kleinke.html) (for an amusing look into the crystal ball).

Adequacy

Adequacy is not about whether the proposal would bring in enough taxes to pay for itself. Rather, Adequacy compares the quantity of taxes necessary for the proposal with the quantity necessary for the status quo or for a different proposal. A proposal providing more benefits for less money is consistent with adequacy.[223]

Both Democrats and Republicans would save money by improving preventative care and coordination of health care for the chronically ill. Also, both would replace paper records with electronic systems and put better plans in place for reducing costly medical mistakes. All support "best practices" research and a repository for that research. In short, Democrats and Republicans agree on improvements to the health care system that would save money. All these proposals are consistent with adequacy. However, candidates provide scant details for how they would pay the up-front costs of implementing these changes.

Except for Kucinich, Clinton, and McCain, candidates do not tell us how they plan to pay for their proposed tax deductions, tax credits, and expansions of public health insurance. At least Kucinich attempts to show a balance sheet and proposes new taxes,[224] and Clinton gives a broad stroke plan to pay for her proposals.[225] But the other candidates leave us clueless. Mostly they talk about repealing the Bush tax cuts of 2001 and 2003. Also, some discuss how much money can be saved by reducing the administrative overhead of private insurance companies.

Repealing the Bush tax cuts will increase revenue to the Internal Revenue Service. So such proposals are consistent with adequacy when viewed from the perspective of our present situation. However, it is more enlightening to view adequacy as if these proposals for change were happening *before* the Bush tax cuts. Had the Democrats made their health care proposals before the Bush tax cuts, then how would they have paid for their programs? The answer is that they would have either borrowed money, as Bush did to fund the tax cuts, or they would have had to find a new source of revenue. Bush made his tax cuts by borrowing money. Democrats are simply proposing to fund their health care changes by continuing that same borrowing. Perhaps an improved health care system for the general citizenry is a better use of such borrowed money, but one should not lose sight of the fact that repealing George Bush's tax cuts "pays" for nothing: it simply continues the borrowing. Perhaps America

[223] Joseph T. Sneed, *The Criteria of Federal Income Tax Policy*, 17 Stan. L. Rev. 567, 569-72 (1965).
[224] John Conyers, Jr., *John Conyers, Jr., Financing H.R. 676*, http://www.house.gov/conyers/news_hr676_2.htm (accessed Dec. 30, 2007).
[225] Clinton, *supra* n. 6, at 11.

should repeal the Bush tax cuts to balance the budget. Then candidates should propose new revenue to *actually* pay for their proposals.

Democrats for both *Healthcare for All* and *Universal Healthcare* claim their proposals will improve adequacy by decreasing or eliminating overhead of private health insurance companies. Dennis Kucinich says this would save "as much as $350 billion per year . . . enough to provide comprehensive coverage to every American without paying any more than we already do."[226] Kucinich cites no source for this $350 billion figure. But other candidates cite to an article by Woolhandler, et al., a 2003 study[227] [228] which says that "[i]n 1999, health administration costs totaled at least $294.3 billion in the United States."[229] Further, Edwards claims the article says two-thirds of the administrative costs of private insurers is for underwriting and marketing activities. He suggests that this portion of overhead would be eliminated to the extent that private insurers are not utilized.[230] But John Edwards misconstrues Woolhandler when he says underwriting and marketing activities account for two-thirds of private insurers' overhead. Woolhandler actually said, "Functions essential to private insurance but absent in public programs, *such as* underwriting and marketing, account for about two thirds of private insurers' overhead."[231] She does not claim that two-thirds of private insurers' overhead is underwriting and marketing; rather, she says marketing and underwriting are included within the two-thirds of the overhead that Woolhandler finds unessential for public programs.

Even so, Woolhandler's two-thirds ratio is a broad generalization. As a data source, Woolhandler cites a web site authored by Sherlock Company[232] which "[p]rovides benchmarking data and analysis for the management of administrative functions."[233] While the cited website no longer exists, the newsletter containing the data is still available on Sherlock Company's reorganized website.[234] That data breaks administrative costs into four categories, listed here with the percentage of total administrative costs that each represents: Marketing (24.73 percent), Medical

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[226] Kucinich, *supra* n. 15, at ¶3.
[227] Edwards, *supra* n. 7, at "AMERICA'S BROKEN HEALTH CARE SYSTEM, Inconsistent Quality."
[228] Obama, *supra* n. 3, at "MODERNIZING THE U.S. HEALTH CARE SYSTEM TO LOWER COSTS & IMPROVE QUALITY" ¶2.
[229] Steffie Woolhandler, Terry Campbell & David U. Himmelstein, *Costs of Health Care Administration in the United States and Canada*, 349 New Eng. J. Med. 768, 768 (2003).
[230] Edwards, *supra* n. 7, at "UNIVERSAL COVERAGE THROUGH SHARED RESPONSIBILITY, Third: New Health Care Markets, Promoting Affordable Care."
[231] Woolhandler, *supra* n. 228, at 773 (emphasis added).
[232] *Id.* at 775 n. 40.
[233] Sherlock Company, *Sherlock Company*, http://www.sherlockco.com/ (accessed May 7, 2008).
[234] Sherlock Company, *Plan Management Navigator*, select "July 2003," http://www.sherlockco.com/navigator/ (accessed May 7, 2008) (Douglas Sherlock, owner of Sherlock Company, confirmed in a personal telephone interview that the July 2003 data is the same, only reorganized).

& Provider Management (11.13 percent), Account & Membership Administration (41.08 percent), and Corporate Services (23.06 percent). The data categorization is no finer, and Woolhandler did not consult with the Sherlock Company concerning this data.[235] Woolhandler likely added Marketing (24.73 percent) to Account & Membership Administration (41.08 percent) to arrive at a sum of 65.81 percent, which is nearly two-thirds.

Generally speaking, this two-thirds ratio is not unreasonable. But the Account & Membership Administration category includes "customer service" as well as "information systems." These expensive services would not likely be eliminated by replacing private insurance with public financing. To be fair, other expenses that likely would be eliminated, such as "miscellaneous business taxes," are not included in Woolhander's two-thirds ratio. But the point is that this ratio is at best a broad generalization. A more nuanced, in-depth approach is required before Democrats can accurately claim they will save billions in administrative overhead.

Regarding how the Republicans would pay for their proposed tax deductions and credits, they are simply mute. The implication, given the Republican propensity to avoid new taxes, is that they, too, would borrow.

Stability

This criterion concerns how the tax in question effects the stability of the overall economy. "Its object is to assure a full utilization of resources, human and material, under a given rate of growth in output without inflation."[236] However, the market itself is the main player regarding economic stability.[237] Still, taxation affects disposable income, and tax incentives may induce certain consumption patterns. Tax liability subtracts from disposable income, tax credits exempting income from taxation add to disposable income, and refundable tax credits add to disposable income. "[A] change in disposable income, however induced, alters consumption expenditures which in turn further alter both disposable income and consumption expenditures."[238] Tax incentives are given only when individuals behave in certain ways, which may include consuming certain products. "[C]hanges in consumption expenditures induce . . . changes in the demand of firms for capital goods, which in turn induce further changes in consumption expenditures."[239] These observed effects on economic stability are highly relevant to proposed changes to the health care system.

As described above, *Universal Healthcare* proposals come in two flavors. Clinton and Edwards would

[235] Telephone Interview with Douglas Sherlock, Owner, Sherlock Company (Dec. 20, 2007) (Mr. Sherlock confirmed that the Woolhandler authors did not consult his company regarding the data).
[236] Sneed, *supra* n. 222, at 591 n. 86.
[237] *Id.*
[238] *Id.* at 591.
[239] *Id.* at 591-92.

require individuals to purchase health insurance and would refund money to individuals when they file their taxes. Obama would not require individuals, except to cover children, to purchase health insurance, and would provide up-front direct subsidies to those who do purchase health insurance. Regarding stability, the differences are significant.

Requiring individuals to purchase health insurance is tantamount to increasing their tax burden by the amount of their required health insurance premiums. By doing so, Clinton and Edwards would decrease the disposable income available to those individuals. Many would be reimbursed for these premiums, but only after they have come up with the money on their own. Given that the average health insurance premium in 2007 was $4,479 for an individual, and $12,106 for a family,[240] the Clinton and Edwards plans would likely alter consumption patterns significantly, forcing people to forgo their typical consumption in order to pay the up front costs of health insurance premiums. In addition, getting a large reimbursing tax refund could alter consumption by inducing purchase of large-ticket items rather than living expenses.

In contrast, the Obama plan would not require purchase of health insurance but would provide direct subsidies, so those wishing to buy insurance would not have to come up with health insurance premiums up front. Thus, Obama's plan is less likely to disrupt consumption patterns. No individual would be forced to consume health insurance rather than other products. No individual wishing to have insurance would be forced to change consumption in order to come up with the necessary premiums. And no individual receiving aid in purchasing health insurance would get a large reimbursing tax credit. The Clinton and Edwards plans would likely cause large disruptions to consumption patterns with possible adverse affects on economic stability. Obama's plan is less likely to have such adverse affects on economic stability.

Ironically, increasing insurance coverage, as proposed by most Democrats and Republicans, will only create more competition for health care dollars; thus, they will exacerbate the very affordability problem they hope to solve. Whether through tax deductions, tax credits, refundable tax credits, or subsidies, all candidates propose to give money to the citizenry so they can purchase health insurance. This will increase disposable income. Specifically, it will increase the amount of money people will have to buy health insurance, and consequently, health care services. Indeed, the very purpose of giving away this money is to get people to buy health insurance so they can access the health care system.

As America's experience with Medicare indicates, once previously uninsured individuals become insured,

[240] Kaiser Fam. Found. & Health Research And Educ. Trust, *Employer Health Benefits: 2007 Annual Survey* 1, http://www.kff.org/insurance/7672/upload/76723.pdf (Sept. 2007).

they will access the health care system.[241] With 47 million newly insured individuals gaining access to health care services, one would expect demand for health services to go up, perhaps precipitously, creating inflationary pressure. This is particularly problematic since the American health care system is already in a period of high inflation.[242] "[I]n a period of inflation a tax adjustment designed to increase the disposable income of those with a relatively high average propensity to consume may be inconsistent with this criterion."[243] In other words, putting more money in the hands of people so they can buy something already in high demand is likely to make the economy less stable. It will cause prices to escalate even more sharply.

It is foolhardy to presume that insuring people will make medical care more affordable. It will not. The cost of medical care will decline only when competition for health care dollars is reduced or regulated. Thus, unless a non-market mechanism is put in place for allocating scarce medical resources, one must conclude that both *Universal Healthcare* and *Deregulated, Independent Healthcare*, which simply add people to the rolls of the insured, are inconsistent with the criterion of stability. These proposals will not stabilize medical costs, making them affordable, but will instead exacerbate the problem.

America's health care financing will not likely be consistent with stability until a non-market mechanism is put in place for controlling the allocation of scarce medical resources. Until then, new technology, an aging population, and other forces will likely keep the health care service market unstable. Because Kucinich's *Healthcare for All* proposal limits benefits to those that are "medically necessary,"[244] it is possible that his proposal would institute such a mechanism. Kucinich does not deny that *Healthcare for All* would ration health care services. Instead, he merely points out that our present system rations health care by denying access to those individuals who cannot afford it.[245] [246] Assuming that the term "medically necessary" would be used to determine which services would be covered, it may be possible that rationing could be used to rein in rapidly expanding health care costs. If so, then *Healthcare for All* would be most consistent with stability.

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[241] *See* Finkelstein, *supra* n. 211.
[242] *See* Aaron Catlin, et al., *National Health Spending in 2006: A Year of Change for Prescription Drugs*, 27 Health Affairs 14 (No. 1, 2008).
[243] Sneed, *supra* n. 222, at 593-94.
[244] *United States National Health Insurance Act*, H.R. 676, 109th Cong. § 102(a) (Feb. 8, 2005) (as introduced).
[245] Ctr. Am. Progress Action Fund, *Center for American Progress Action Fund, Events, Transcript: Rep. Dennis Kucinich* ¶17, http://www.americanprogressaction.org/events/healthforum/kucinich_transcript.html (accessed May 7, 2008).
[246] Maggie Mahar, *Money-Driven Medicine, The Real Reason Health Care Costs So Much* 218 (HarperCollins 2006) (describing how *ad hoc* health care rationing already exists).

Conclusion

America faces four health care challenges. First, health care is becoming increasingly unaffordable. Second, many of our health care dollars are wasted. Third, America gets poor health care quality. And fourth, health care is unfairly distributed. Democrats and Republicans share a resolve to deal with America's waste and quality problems. Each would save money by improving preventative care and by better coordinating health care for the chronically ill. Both would replace paper records with electronic systems and put better plans in place for reducing costly medical mistakes. All support "best practices" research and a repository for that research. These plans would likely be effective if well implemented. However, regarding affordability and fair distribution, the proposed plans vary greatly in their potential to meet success.

Healthcare for All

Healthcare for All eliminates the tax bias toward employer-paid health benefits. It eliminates the problem of the uninsured accessing health care inefficiently. It eliminates the bias wealthier individuals get from health benefit deductions. It is a direct expenditure program, so Congressional committees with expertise on health care rather than the tax committees would be involved in drafting the legislation. As a direct tax expenditure program, an agency would be created to coordinate and regulate this very complex area, which is not subject to typical market forces. This agency would have control of its budget, which would be under better political scrutiny than a tax expenditure program.

Healthcare for All makes health care expenditures transparent on both the individual and national levels and eliminates the complicated involvement of employers in health care. It moves the determination of what is medically necessary away from insurance companies, who have a conflict of interest because of their profit incentive. By regulations based on negotiations with health care providers, it replaces free market determination of health care pricing which is not effective because of the complexity of the information involved in determining appropriate health care consumption and quality. While the health insurance industry would shrivel, the rest of the economy would likely blossom as its citizenry became more healthy and secure.

Most importantly, *Healthcare for All* distributes the risk of poor health as broadly as possible through progressive taxation, protecting every citizen from individually bearing the cost of poor health. By removing health as a factor which determines economic inequality, it advances the notion that any such inequalities should be based

on industry and merit—for poor health strikes both the industrious and the lazy. It would reduce overall expenditures by removing profit and overhead from the financing of health care. It would stabilize the health care market as America faces the health challenges of an aging population.

In short, *Healthcare for All* would reduce America's overall expenditures on health care. In addition, it would fairly distribute health care by giving every citizen the same potential for health care as every other citizen. And it would fairly distribute the cost of health care through progressive, rather than regressive taxation.

Universal Healthcare

Universal Healthcare worsens the tax bias toward employer paid health benefits by expanding tax expenditures to pay employers to cover more employees. It further exacerbates this bias by forcing individuals to buy health benefits with taxed dollars. It does not solve the problem of the uninsured inefficiently accessing the health care system through emergency rooms: some will ignore the health insurance requirements, while others will not pay their deductibles, co-pays, co-insurance, or other out-of-pocket expenses to obtain preventative or timely health care. It does eliminate advantages the wealthy get from deductions by instead providing subsidies or credits.

Under Obama's plan, *Universal Healthcare* provides direct subsidies rather than tax incentives with all the advantages of direct tax programs described above in the *Healthcare for All* section. However, under Clinton, *Universal Healthcare* legislation would be subject to Congressional tax committees rather than committees with more appropriate expertise. The IRS would administer these tax incentives rather than an agency with more expertise, and the budget for these tax incentives would be under less political scrutiny than would be direct expenditures. Managing entrenched tax expenditures would be more difficult than managing the budget of a direct expenditure program. Potentially, many of the new dollars flooding into the health care market would be funneled through the private insurance industry, where a portion would be taken for profits and needless overhead.

Universal Healthcare does not make health care expenditures transparent. It not only continues to tax workers behind their backs by pretending that tax incentives for health benefits are fringe benefits rather than foregone wages, but also extends the breadth of this deception by requiring more employers to provide insurance. In addition, under Clinton, instead of honestly taxing America up front, it indirectly taxes America by forcing everyone to buy health insurance. Because health insurance premiums do not differ between rich and poor, those Democrats who would require health insurance have embraced a regressive tax scheme to achieve *Universal Healthcare*. And while tax credits mitigate this regressive tax to some degree, they do not account for how the poor will finance their

health plans during the year as they wait for their reimbursement. Further, they do not account for the middle class which will get no tax credits. Required health insurance under *Universal Healthcare* is a regressive tax.

Universal Healthcare reduces health insurance costs by enlarging risk pools and reducing private insurance profits and overhead. But these initial gains from reduced health insurance costs would eventually be recaptured by rising health care costs. *Universal Healthcare* floods new tax dollars into the health care market and insures more people. Because it retains only market controls on health care prices, demand would increase precipitously which would drive up health care prices. Eventually health insurance prices would also rise. Rather than solving the problem of affordability, *Universal Healthcare* exacerbates it. Because these increases would affect the poor more than the rich, *Universal Healthcare* will actually produce greater economic inequality than exists today.

And *Universal Healthcare* is not even universal. Obama does not require insurance, so anyone foregoing health insurance would risk poverty should their health fail. Clinton requires insurance, but not everyone will obey. And even those who do obey will only be covered to the extent of the minimum requirements. They will still be at risk for deductibles, co-pays, co-insurance, and costs over maximum benefits. Small out-of-pocket expenses would induce some to scrimp on preventative care. And large out-of-pocket expenses could still drive the catastrophically ill into poverty. *Universal Healthcare* is not the optimal solution for distributing America's health care more fairly. Making people buy insurance and forcing insurance companies to provide insurance on the government's terms is tantamount to socializing the financing of health care anyway. But it does not optimize the risk group. America would do better to opt for the largest risk group of all.

Deregulated, Independent Healthcare

Deregulated, Independent Healthcare would reduce health care prices by getting Americans to shop for health care as they do for cars—purchasing only what they need and demanding quality. But people don't often know what health care they need and often can't judge its quality. The scientific complexity of health care information would likely prevent health care consumers from shopping effectively even if the information were available. Also, some shoppers would scrimp on preventative care to save money. These "penny wise – pound foolish" shoppers would cost the health care system more as their "penny wise" lack of prevention turns into "pound foolish" long-term health problems.

Deregulated, Independent Healthcare under McCain eliminates the bias toward employment-based health benefits by replacing the exclusion of employer-paid health benefits with a tax credit to anyone who buys health

insurance. Because McCain offers a tax credit, his solution gives equal tax relief to wealthy and poor alike. Other Republicans retain the exclusion of employer-paid health benefits, but also give a tax deduction for non-employer-paid health benefits. This reduces the bias toward employment-based health benefits to the extent of the difference between what workers and non-workers would be allowed to deduct. But tax deductions benefit wealthier Americans more because they give more tax relief to those in higher tax brackets.

Because they are not need-based, Republican credits or deductions would give tax relief to those who likely would have bought health insurance even without the incentive. Legislation regarding these tax incentives would be subject to Congressional tax committees rather than committees with expertise in health care. The IRS would administer the tax incentives. And the budget for these tax incentives would not be under political scrutiny like direct tax expenditures would. Once entrenched, managing the budget of these tax incentives would be more difficult than managing the budget of a direct expenditure program. More untaxed dollars would funnel through the private health insurance industry as not only employees, but also non-employees would utilize these tax incentives.

Deregulated, Independent Healthcare would improve transparency to the extent people are enticed to move away from employment-based insurance. But the cost of this transparency would be a decrease in the size of employment-based insurance groups. As employment-based insurance groups shrink, their effectiveness at spreading health risk degrades. If presently healthy people stop sharing the risk of potential future health problems, then the cost of sharing risk through health insurance will go up. Economic inequality between the healthy and the unhealthy would increase as healthy individuals leave employment-based insurance groups to pursue less expensive health insurance for healthier groups or with higher deductibles. Unless Republicans replace employment-based groups with other effective risk groups, their policy threatens to diminish people's ability to use insurance to reduce the financial risk of health loss.

If Republican plans do degrade employer-based insurance groups, consequent price increases for health insurance will swell the ranks of the uninsured. While shopping, some who misjudge their health and reduce the comprehensiveness of their insurance will lose their health. When they cannot pay their bills, these underinsured will join the swelling ranks of the uninsured who inefficiently access health care through emergency rooms. *Deregulated, Independent Healthcare* worsens this problem and does little to solve it. McCain offers some relief, but his refundable tax credit is far too little to cover comprehensive health insurance. Other Republicans offer no subsidy or refundable tax credit, so those with no tax burden would get no help buying health insurance. If Romney

shifted hospital reimbursements for treating the uninsured to purchase insurance for the needy instead, it would reduce the problem. But hospitals would continue treating the uninsured and passing on the costs unless they were permitted to leave these people on the streets—an unconscionable path.

In total, *Deregulated, Independent Healthcare* would allow healthy individuals to cherry-pick themselves into less expensive health insurance by shopping, while unhealthy individuals would be left behind with more expensive or no insurance. Some newly underinsured healthy individuals would lose their health. They and the already less-healthy would pay more in premiums and would only be able to purchase the health care they could afford. Thus, Republican shopping would likely lead to reduced demand for actual health care which might stabilize health care prices. But the decreased demand would be the result of people not getting the health care they need.

Thus, the unfair distribution of health care would worsen. Health care costs for the healthy would stabilize and perhaps be affordable. For the sick, health insurance premiums and deductibles would increase or be unavailable. Out-of-pocket expenses would increase, especially to those who could no longer afford insurance. The rich sick would pay; the poor sick might get Medicaid; but the middle-class sick would suffer.

Conclusion

Health care is basic. When people are sick, they need to be cared for by those around them. If held personally responsible for themselves, sick people often get sicker or die. If "those around them" is a small group, not only the sick individual, but also the group is at risk of great suffering. But as "those around them" grows in size, not only the sick individual, but also the group suffers less. In America, the largest group that could constitute "those around them" is every citizen of the United States. If we all chipped in, the sick and the small group of "those around them" would suffer less. If we all participated, each of us would feel more secure that when our turn came to be sick, there would be adequate care to heal us.

Universal Healthcare exacerbates the problem of affordability and does not achieve the universality its name promises. *Deregulated, Independent Healthcare* shopping won't help when shoppers cannot understand the information on which they base their buying decisions. Instead, Republican plans would shrink groups constituting "those around them" making them more vulnerable to suffering. Only *Healthcare for All* recognizes that the largest group that can constitute "those around them" is best. *Healthcare for All* has the greatest potential for making America's health care affordable. And only *Healthcare for All* will ever distribute health care truly universally, and thus fairly.

Consistency of Health Care Proposals with Classical Tax Policy Criteria

☆ = Great ◗ = Bad
★ = Good ● = Awful

	Healthcare for All	*Universal Healthcare*	*Deregulated, Independent Healthcare*
Equity			
Fixes Bias Toward Employer-Paid Health Benefits Between Employees	☆	★	★ ☆ McCain
Between Employees & Non-employee Taxpayers	☆	●	★ ☆ McCain
Fixes Uninsured Getting Free Care	☆	★	●
Credits/Subsidies, not Deductions	☆	☆	● ☆ McCain
Reduced Economic Inequality	☆	◗	● ◗ McCain
Practicality			
Direct Expenditures, not Tax Incentives	☆	● ☆ Obama	●
Likelihood of Implementing Legislation	●	★ ◗ Obama	★
Political Order			
Makes Health Care Expenditures Transparent	☆	● ◗ Obama	★
Free Market Compatibility	●	●	●
Adequacy			
Accounts for Expenditures	★	● ★ Clinton	● ◗ McCain
Stability	☆	● ◗ Obama	◗