“SET ASIDE” FINANCING PROPOSALS

"Set Aside" Funding Proposals: Basic Summary: One of the central concerns is that the Congressional Budget Office is not willing to score substantial savings associated with various reforms intended to reduce costs. One approach under consideration is to include premium taxes in the funding mix. The "set-aside" approach is put forth as a substitute for that AND a back-up fail-safe funding mechanism (or, in the absence of premium taxes, exclusively as a back-up funding mechanism). For both variations of the "set aside" funding proposals herein, actuaries would annually estimate the amount of money needed to pay for the subsidies required for the following calendar year. The funding allocated from general fund revenues would be subtracted, leaving the amount (if any) to be made up.

Alternative A: Percentage of Third Party Payer Receipts or Payments. In this alternative, actuaries would calculate in advance the proportion the additional amount needed to pay for the premium subsidies would have to the value of the total amount of health benefits that would be provided in the private sector in the next calendar year. This ratio would be applied as a percentage of the gross revenues (i.e., predominately premiums) of insurers (and as the same percentage of the health benefit payments for employees by self-insured entities).

Alternative B. Shared Responsibility of Third-Party Payers. In a number of states, motor vehicle insurers, as a condition of doing business, are required to accept their proportionate share of high-risk insureds at premiums that do not fully cover the cost of insuring those in the high-risk pool. In a similar manner, insurance companies could be required to provide insurance at discounted rates (or, in the case of those with the lowest incomes, for free) to those certified as eligible on the basis of indigency, in proportion to their market share. A mechanism would be provided to reimburse companies that wind up providing more subsidized insurance than their market share from the receipts of companies that wind up providing less than their market share. Self-insured entities would help subsidize such insurance in the proportion the health benefits they provide their employees bear to the total of all health benefits provided (by self-insured entities and through health insurance). General fund revenues would be provided to insurers in proportion to the value of the subsidized insurance they provide, so the effect of the mechanism would be to pass on, in the form of higher premiums, only the difference between the funds required for the subsidies and the general fund revenues allocated.

Rationale:

The "set aside" method of backup financing for premium subsidies is directly tied to the level of health care spending in the private sector. It meets the need for each year's subsidy payments because its percentage is calculated to do so (annually variable), and it is feasible for it to do so because the base to which this percentage is applied is health care spending itself. It therefore fully reflects both successes and failures in efforts to constrain increases in health care costs.

Unlike either an effort to recapture savings from efforts to reduce health care costs or an attempt to rely on general funds that draw from broad-based taxes, a "set aside" relates directly to the contemporary level of health care spending. The revenue it raises increases in direct proportion to increases in health care costs, just as the subsidies it finances must do. This "model ... can provide a long-term basis for funding health care equity. It takes the growing level of

private health consumption and redirects part of it to fund health care for the poor. It is a revenue source that will grow along with the need for the revenue. ... It generates a level of health care spending that ... the government can afford–today and twenty years from now."(Glied)[1]

Moreover, since its effect is to price into the cost of health care benefits provided by private entities a proportionate share of the cost of subsidizing health care benefits for those with low-income, it both prevents health care spending from rising beyond what the economy can afford and leaves it free to rise to the extent that the economy, due to productivity increases, *can* support the increasing devotion of resources to health care.

ALTERNATIVE A: SET ASIDE AS PERCENTAGE OF THIRD PARTY PAYER RECEIPTS OR PAYMENTS

SEC. 101. DEFINITIONS.

(a) "Health benefit" means any insurance, medical service, or health plan provided by contract or agreement in any manner that is designed to supply compensation or coverage for expenses incurred by a beneficiary for medical services or supplies.

(b) "Third-party payer" means an entity that provides health benefits.

SEC. 201. BOARD OF ACTUARIES AND MANAGERS.

(a) A board of actuaries and managers is created which shall be chaired by the Secretary (or the Secretary's designee) and shall consist of one member from each of the following organizations:

(1) The Society of Actuaries, from Fellows of the Society of Actuaries;
(2) The American Academy of Actuaries, from its members;
(3) The National Association of Insurers and Financial Advisors; and
(4) The National Association of Health Underwriters.

(b) Other than the Secretary (or the Secretary's designee), the initial board members shall be appointed as follows: two shall serve two years; one shall serve three years; and one shall serve four years. At the initial meeting of the board, the Secretary (or the Secretary's designee) shall supervise a drawing of lots to determine the length of term to be served by each initial board member. Subsequent board members shall serve for a term of three years. A board member's term shall continue until that member's successor is appointed. The Secretary shall serve as chair of the board throughout tenure as Secretary, but may appoint, remove, or replace any designee to serve in the Secretary's place at any time during that tenure.

(c) Vacancies in the board shall be filled by the organization designating the member who created the vacancy. Board members may be removed by the Secretary for cause.

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[1] Sherry Glied, *Chronic Condition: Why Health Reform Fails* (Harvard Univ. Press: Cambridge, Mass. , 1997), p 231. It should be noted that Professor Glied has not proposed nor endorsed the specific "set aside" method. The quotation relates more generally to her advocacy of a tax on the cost of health care to fund subsidies for insurance premiums for those who could not otherwise afford them.

(d) The board shall appoint an executive director, who shall be a full-time employee of the board; administer the board's activities and contracts; supervise the staff of the board; and serve at the pleasure of the board.

[INSERT APPROPRIATE PROVISIONS FOR COMPENSATION AND EXPENSES OF BOARD MEMBERS, AND PROCEDURE FOR CONDUCT OF BOARD BUSINESS (QUORUM, ETC.)]

SEC. 202. SET ASIDE CALCULATION.

(a) Based on economic and population projections, the board shall annually estimate for each succeeding calendar year, beginning with calendar year 2011:

(1) the amount required to meet the need for subsidies under [premium subsidies provisions];

(2) an amount budgeted for administration of the board;

(3) an amount judged to be an appropriate reserve for errors of estimation and contingencies;

(4) the total of the amounts described in paragraphs (1) through (3) of this subsection; and

(5) the difference between the amount calculated under paragraph (4) and [the funding allocated from other sources to pay for premium subsidies].

(b) The board shall annually estimate for each succeeding calendar year, beginning with calendar year 2011, the total value of the actuarial equivalent for all health benefits expected to be provided by third-party payers in that calendar year, other than those for Medicare recipients, Medicaid recipients, TRICARE/CHAMPUS recipients, Indian Healthcare recipients, and Veteran's Health recipients.

(c) The board shall annually calculate for the succeeding calendar year, beginning with calendar year 2011, the percentage equivalent of the ratio of:

(1) the number determined under subsection (a)(5) to

(2) the number determined under subsection (b).

(d) The board shall further adjust the percentage determined under subsection (c), based on a dynamic estimate of the projected effect of the imposition of the percentage withholding requirement under Section 204(a) on prices for medical services and the consequent effect on basic plan insurance premiums and the amount needed for subsidies.

(e) The board shall publicly announce the percentage determined under subsection (d) as the set aside percentage applicable to a stated calendar year and issue a report detailing the estimates, budgets, and calculations on which it is based, no later than April 30 of the prior year.

SEC. 203. COMPREHENSIVE HEATH INSURANCE POOL ACCOUNT. The Secretary shall establish and administer the Comprehensive Health Insurance Pool Account.

SEC. 204. THIRD-PARTY PAYER RESPONSIBILITIES.

(a) Beginning January 1, 2011, each third party payer shall calculate, withhold and set aside an amount equal to the product of :

(1) the sum of the premium amounts it charges for health insurance

provided to individuals within the United States during the calendar year and, with respect to any employee for whom it provides compensation or coverage for expenses incurred for medical services or supplies other than through payment of premiums on the employee's behalf to an insurer, of any such amounts it pays on behalf of its employees and

(2) the set aside percentage, announced by the board under Section 202 (e), applicable to that calendar year.

This subsection does not apply with respect to medical services covered by Medicare for beneficiaries who are Medicare recipients, or to covered medical services for Medicaid recipients, TRICARE/CHAMPUS recipients, Indian Healthcare recipients, or Veteran's Health Recipients.

(b) Each third-party payer that offers generally available health insurance shall accept as payment toward the premiums for such insurance certificates of entitlement to subsidy issued in accordance with [premium subsidy provisions].

(1) If, with respect to any payment year, the total value of the certificates of entitlement to subsidy accepted by the payer for health insurance applicable to that payment year exceeds the amounts withheld in accordance with subsection (a) the payer shall be entitled to receive the difference from the Comprehensive Health Insurance Pool Account.

(2) If , with respect to any payment year, the value of the certificates of entitlement to subsidy accepted by the payer for health insurance applicable to that payment year is less than the amounts withheld in accordance with subsection (a) the payer shall remit the difference to the Comprehensive Health Insurance Pool Account.

(c) Each third-party payer that does not offer generally available health insurance shall monthly remit to the Comprehensive Health Insurance Pool Account the amounts withheld in accordance with subsection (a).

(d) The Secretary shall by regulation establish standards and procedures for determining the schedule and circumstances under which the payments from and remittances to the Comprehensive Health Insurance Pool Account in accordance with subsection (b) (1) and (2) shall be made.

SEC. 205. AUDITING AUTHORITY AND ENFORCEMENT.

(a) After consultation with the Board of Actuaries and Managers, the Secretary shall establish by regulation:

(1) Recordkeeping and reporting requirements for third-party payers adequate to document compliance with the provisions of Section 204;

(2) Recordkeeping and reporting requirements for third-party payers and health care providers to facilitate the gathering of accurate and adequate data to enable the Board of Actuaries and Managers to fulfill its responsibilities under Section 202.

(b) The Secretary shall have authority to, and shall, conduct audits of third-party payers, including random audits, to monitor accuracy and detect fraud and noncompliance with

respect to the provisions of Sections 204 and this section, and the regulations implementing them.

(c) The Secretary shall establish by regulation an appropriate mechanism for enforcing a third-party payer's liability if a third-party payer does not make a scheduled payment; provided, however, that the Secretary may, for the purpose of administrative simplicity, establish threshold liability amounts below which enforcement may be modified or waived. This enforcement mechanism may include assessment of interest on the unpaid liability at a rate not to exceed an annual percentage rate of 18 percent and late fees or penalties at a rate not to exceed five per cent per month.

(d) Any third-party payer that fails to file any data, statistics, schedules, or other information required under Section 204 or this section or by any regulation adopted by the Secretary thereunder or which falsifies the same, is subject to a civil penalty of not more than $5,000 for each day on which the violation occurs or continues, which penalty may be assessed in an action brought on behalf of the United States in any court of competent jurisdiction. The attorney general shall bring any appropriate action, including one for injunctive relief, as may be necessary for the enforcement of this chapter.

ALTERNATIVE B: FINANCING PREMIUM SUBSIDIES THROUGH SHARED RESPONSIBILITY OF THIRD-PARTY PAYERS

SEC. 101. DEFINITIONS

(a) "Health benefit" means any insurance, medical service, or health plan provided by contract or agreement in any manner that is designed to supply compensation or coverage for expenses incurred by a beneficiary for medical services or supplies.

(b) "Index year" means the second calendar year prior to the calendar year in which the quota percentage will be applied.

(c) "Payment year" means the calendar year in which the quota percentage will be applied.

(d) "Third-party payer" means an entity that provides health benefits.

SEC. 201. BOARD OF ACTUARIES AND MANAGERS.

(a) A board of actuaries and managers is created which shall be chaired by the Secretary (or the Secretary's designee) and shall consist of one member from each of the following organizations:

(1) The Society of Actuaries, from Fellows of the Society of Actuaries;

(2) The American Academy of Actuaries, from its members;

(3) The National Association of Insurers and Financial Advisors; and

(4) The National Association of Health Underwriters.

(b) Other than the Secretary (or the Secretary's designee), the initial board members shall be appointed as follows: two shall serve two years; one shall serve three years; and one shall serve four years. At the initial meeting of the board, the Secretary (or the Secretary's designee) shall supervise a drawing of lots to determine the length of term to be served by each initial board member. Subsequent board members shall serve for a term of three years. A board member's term shall continue until that member's successor is appointed. The Secretary shall serve as chair of the board throughout tenure as Secretary, but may appoint, remove, or replace any designee to serve in the Secretary's place at any time during that tenure.

(c) Vacancies in the board shall be filled by the organization designating the member who created the vacancy. Board members may be removed by the Secretary for cause.

(d) The board shall appoint an executive director, who shall be a full-time employee of the board; administer the board's activities and contracts; supervise the staff of the board; and serve at the pleasure of the board.

[INSERT APPROPRIATE PROVISIONS FOR COMPENSATION AND EXPENSES OF BOARD MEMBERS, AND PROCEDURE FOR CONDUCT OF BOARD BUSINESS (QUORUM, ETC.)]

SEC. 202. FINANCING NEED ASSESSMENT.

(a) Based on economic and population projections, the board shall annually estimate for each succeeding calendar year, beginning with calendar year 2011:

(1) the amount required to meet the need for subsidies under [premium subsidies provisions];

(2) an amount budgeted for administration of the board and of the Comprehensive Health Insurance Pool Account established by Section 203(a);

(3) an amount judged to be an appropriate reserve for errors of estimation and contingencies, including the contingency of third-party payers that provide health benefits in the index year but that do not provide health benefits, or substantially reduce the health benefits they provide, for the payment year; and

(4) the total of the amounts described in paragraphs (1) through (4) of this subsection; and

(5) the difference between the amount calculated under paragraph (4) and [the funding allocated from other sources to pay for premium subsidies].

(b) The board shall annually estimate for each succeeding calendar year, beginning with calendar year 2009, the total of the actuarial equivalent of all health benefits that were provided by third-party payers in that calendar year, other than those for Medicare recipients, Medicaid recipients, TRICARE/CHAMPUS recipients, Indian Healthcare recipients, and Veteran's Health recipients.

SEC. 203. RESPONSIBILITIES OF THIRD-PARTY PAYERS; COMPREHENSIVE HEALTH INSURANCE POOL ACCOUNT.

(a) The Secretary shall establish and administer the Comprehensive Health Insurance Pool Account.

(b) The Secretary shall by regulation establish reporting requirements and procedures to determine the quota percentage to be assigned to each third-party payer for each calendar year beginning with calendar year 2011, each of which shall be deemed a "payment year".

(1) Each third-party payer's quota percentage for a payment year shall be the percentage equivalent of the ratio of :

(A) the actuarial equivalent of the health benefits it provided in the index year to

(B) the total amount estimated by the board for the index year under Section 202(b).

(2) The Secretary shall by regulation fairly and reasonably establish standards for determining the quota percentages for third-party payers that will provide health benefits in the payment year but did not provide health benefits during the index year.

(3) The Secretary may by regulation establish procedures for adjusting the quota percentages for third-party payers on the basis of significant changes in the amount of health benefits a third-party payer provides between the index year and the payment year so substantial that application of the quota established under paragraph (1) would be fundamentally unfair; provided, that such procedures shall be designed to take account of both increases and decreases in such amounts so as to be estimated to produce a revenue-neutral result.

(c) Each third-party payer that offers generally available health insurance shall accept as payment toward the premiums for such insurance certificates of entitlement to subsidy issued in accordance with [premium subsidy provisions].

(1) If, with respect to any payment year, the total value of the certificates of entitlement to subsidy accepted by the payer for health insurance applicable to that payment year exceeds the value of the product of the third party payer's quota percentage for the payment year and the amount established by the board under Section 202(a)(5), the payer shall be entitled to receive one-twelfth of the difference each month from the Comprehensive Health Insurance Pool Account.

(2) If , with respect to any payment year, the value of the certificates of entitlement to subsidy accepted by the payer for health insurance applicable to that payment year is less than the value of the product of the third party payer's quota percentage for the payment year and the amount established by the board under Section 202(a)(5), the payer shall monthly remit to the Comprehensive Health Insurance Pool Account one-twelfth of the difference.

(d) Each third-party payer that does not offer generally available health insurance shall monthly remit to the Comprehensive Health Insurance Pool Account an amount equal to the product of one-twelfth of the third party payer's quota percentage for the payment year and the amount established by the board under Section 202(a)(5).

SEC. 204. AUDITING AUTHORITY AND ENFORCEMENT

(a) After consultation with the Board of Actuaries and Managers, the Secretary shall establish by regulation:

(1) Recordkeeping and reporting requirements for third-party payers adequate to document compliance with the provisions of Section 203;

(2) Recordkeeping and reporting requirements for third-party payers and health care providers to facilitate the gathering of accurate and adequate data to enable the Board of Actuaries and Managers to fulfill its responsibilities under Section 202.

(b) The Secretary shall have authority to, and shall, conduct audits of third-party payers, including random audits, to monitor accuracy and detect fraud and noncompliance with respect to the provisions of Section 203 and this section, and the regulations implementing them.

(c) The Secretary shall establish by regulation an appropriate mechanism for enforcing a third-party payer's liability if a third-party payer does not make a scheduled payment; provided, however, that the Secretary may, for the purpose of administrative simplicity, establish threshold liability amounts below which enforcement may be modified or waived. This enforcement mechanism may include assessment of interest on the unpaid liability at a rate not to exceed an annual percentage rate of 18 percent and late fees or penalties at a rate not to exceed five per cent per month.

(d) Any third-party payer that fails to file any data, statistics, schedules, or other information required under Sections 203 or this section or by any regulation adopted by the Secretary thereunder or which falsifies the same, is subject to a civil penalty of not more than $5,000 for each day on which the violation occurs or continues, which penalty may be assessed

in an action brought on behalf of the United States in any court of competent jurisdiction. The attorney general shall bring any appropriate action, including one for injunctive relief, as may be necessary for the enforcement of this chapter.