

**A
United States Health Board**

**Draft Outline
Of
Enabling Legislation
(Layman's Version)**

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Summary

The idea of creating a national “health board” is gaining attention as a new administration and a new Congress take office in Washington. A recent policy paper issued by the Blue Ridge Academic Health Group summarizes the idea. Other opinion leaders, including Tom Daschle, have also proposed the creation of a federal health board.

Blue Ridge Group Policy Paper

The Blue Ridge Academic Health Group has called for the creation of a United States Health Board to:

- a) Bring together leaders from across the healthcare spectrum in a private-public organizational structure conducive to long-term planning and decision-making;
- b) Take up the key challenges facing our health care system such as health insurance benefit equity, attention to mission-critical and vulnerable populations, insurance reform and pooling risk; and economic viability;
- c) Standardize and simplify the capture of health information and financial data, including encounter forms and billing transactions among the government, private insurers and providers of health care services;
- d) Collect and analyze encounter-level data specific to individual providers so as to enable identification of best practices and the most effective models for health services delivery; and
- e) Make information available to the public and to the health care community.

The Blue Ridge Group “sees real promise in using the history and the evolution of the Federal Reserve to guide thinking on how best to get us started.” To take this idea a step further, I take the Federal Reserve Act of 1913, as modified thereafter, and adapt the language to develop what might be an initial draft outline of the enabling legislation and a charter for a United States Health Board.

Health Board Objectives

The United States Health Board, with input and advice of twelve District Boards, shall promulgate and administer health insurance regulations, so as to promote effectively the goals of:

- a) guaranteed access to health insurance; b) affordable premiums and out-of-pocket cost sharing; and c) consumer choice of doctors, hospitals and insurance products.

This adaptation of the Federal Reserve (Fed) structure is an attempt to answer key questions:

- How will a United States Health Board garner broad participation from across the country?
- How will the Board be populated to represent various stakeholders?
- How will the Board be empowered to bring about needed change in the American health care system?

United States Health Board of Governors

The United States Health Board of Governors (hereinafter referred to as the "Board of Governors") shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, for terms of fourteen years. In selecting the members of the Board of Governors, the President shall have due regard to a fair representation of the health care interests of the country.

The Board of Governors shall establish the framework and organizational resources within which the Board and the twelve health districts shall conduct its affairs, and shall determine and prescribe operating goals and budgets.

United States Health District Boards of Directors

The business affairs of each United States Health District shall be conducted under the supervision and control of a board of directors.

District health boards of directors, or duly authorized officers or agents, shall have all powers necessary to carry on the business of regulating and supervising health insurance within the limitations prescribed by the Board of Governors.

Such boards of directors shall consist of nine members, three members chosen by and to be representative of the health insurers doing business in the district, three members who shall represent the provider community with due but not exclusive consideration to the interests of physicians, hospitals, and health care professionals of all disciplines who are compensated by health insurers, and three members who shall be designated by the Board of Governors to represent the public with due but not exclusive consideration to the interests of patients, employers, the government and other payers and consumers of health care services. The Board of Governors shall designate one of the public directors as chairman of the district board.

The key instruments of monetary policy under the authority of the Fed are interest rates (specifically the Fed Funds rate), liquidity facilities, and more recently, market stability facilities. This draft outline of enabling legislation proposes that the key instruments of health care policy under the authority of a National Health Policy Committee be the regulation and supervision of all health insurance products and services in the United States.

National Health Policy Committee

There is hereby created a National Health Policy Committee, which shall consist of the members of the Board of Governors and four (rotating) representatives of the Health Districts. The Committee shall use its authority to regulate and supervise all health insurance marketed and sold in the United States. Generally, these regulatory and supervisory powers shall include: solvency requirements, market conduct, regulation of intermediaries and other service persons.

A key premise of granting this particular authority to a National Health Policy Committee is that the *mechanisms* of payment for health care services are just as likely to modify the organization and delivery of those services as the *amount* of payment.

Because federal control of the “amount” of payment could be construed as either a Medicare-for-all surrogate or a single payor solution, it is altogether a different policy option, and not the proposal described herein.

A central authority governing insurance regulation and supervision is a different option, and national policy regarding mechanisms (not amounts) of payment for health care services is a viable alternative to the current morass of rules, regulations and incentives that come out of the Center for Medicare and Medicaid Services (CMS), state Medicaid plans, and myriad private health insurance vehicles. (*Diagnostic related groups (DRGs), work relative value units (wRVUs), capitation and sub-capitation, fee schedules, fee-for-service, discounted fee-for service, pay for performance, withholds and incentives are examples of “mechanisms” of payment.*)

As a nation, we can learn much from the information gathered when each encounter between patient and health care professional is documented as part of a financial transaction between provider and CMS, between provider and Medicaid plan, and between provider and health insurance company. This kind of information can provide evidence for the discovery of best practices. It can help to reduce care variation from one practitioner to the next. Information derived from comprehensive electronic encounter forms will help to identify therapies and interventions that improve health outcomes and those that do not. And, a robust claims data set can aid in the design of new payment mechanisms that encourage and reward desired behaviors.

By bringing all of the regulation and supervisory authority of these transactions under a single national entity, the possibilities for setting national standards, for simplification of administrative processes, for evaluation of clinical effectiveness and patient satisfaction, and for automation of health information are greatly enhanced.

Discussion

I have shared the Blue Ridge Group policy paper and this draft outline of enabling legislation with several colleagues, both inside and outside of health care. The line of questioning and critique almost always comes down to: Why use the Federal Reserve as a template? Why not start with a clean slate and design a United States Health Board structure that is unique and specific to the challenges of our health care system?

(I disclose that my answers to these questions are influenced by a circumstance that finds me concurrently serving as CEO of BJC HealthCare in St. Louis, and as a Class C director (representing the public) of the Eighth District Federal Reserve Bank, also in St. Louis.)

Merits of Using the Federal Reserve Template

The Federal Reserve has served as our nation's central bank for nearly 100 years. We, the people, know what this "central governing authority" (outside of, and yet accountable to our three branches of government) is capable of doing and what it is not capable of doing. ***America needs a "central governing authority" for its health care system, outside of, and yet accountable to our three branches of government.***

The Federal Reserve does not control our nation's economy, nor does it control our nation's banking system. Our economy and our banking system are still subject to market dynamics. The Federal Reserve has authority over monetary policy, but not fiscal policy. Banks in America still compete with one another. ***America needs to separate authority over the mechanisms of payment for health care services, which can and should be centrally governed, from authority over the amounts of payment for health care services, which should not. We want our providers and insurers of health care services to compete with one another along various dimensions, including quality of care and service, and price.***

The Federal Open Market Committee (FOMC) is made up of the seven members of the Board of Governors (all with one vote) and the twelve District Bank presidents (only five of whom vote at any given time). Importantly, the twelve bank presidents come to each meeting of the FOMC armed with economic and banking data, and anecdotal information from their respective districts across the country. ***American needs a national policy framework for health care, but not one that is buffeted about from one election cycle to the next, not one that is subjected to the undue influence of lobbyists and special interests, and not one that is dominated only by men and women who reside in Washington, DC. Twelve health districts would be established. There would be 36 Class A directors (representing insurers), 36 Class B directors (representing providers) and 36 Class C directors (representing the public), from all parts of the United States responsible for providing guidance and direction to twelve health district presidents, who will deliberate with seven governors, to formulate, implement, and evaluate national health policy.***

United States Health Board Enabling Legislation

Draft Outline

Health Board Objectives

The United States Health Board, with input and advice of twelve District Boards, shall promulgate and administer health insurance regulations, so as to promote effectively the goals of: a) guaranteed access to health insurance; b) affordable premiums and out-of-pocket cost sharing; and c) consumer choice of doctors, hospitals and insurance products.

The Secretary of Health and Human Services shall designate twelve cities to be known as Health District cities, and shall divide the United States into twelve districts (hereafter referred to as "health districts"), each health district to contain only one of such cities. Such cities and districts may be prescribed by Congress to be the same as Federal Reserve cities and districts, especially if the overlap will result in cost efficiencies and sharing of physical, human, and financial assets.

Under regulations to be prescribed by the Secretary, every company that sells, provides, and administers health insurance products in the United States is hereby required, and authorized to signify in writing, within sixty days after the passage of this Act, its acceptance of the terms and provisions contained herein.

United States Health Board of Governors

The United States Health Board of Governors (hereinafter referred to as the "Board of Governors") shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after the date of enactment of this Act, for terms of fourteen years except as hereinafter provided. In selecting the members of the Board of Governors, not more than one of whom shall be selected from any one health district, the President shall have due regard to a fair representation of the health care interests of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive an annual salary of \$____, payable monthly, together with actual necessary reimbursable expenses.

The members of the Board of Governors shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment by any health district, except that this restriction shall not apply to a governor who has served the full term for which he was appointed. Following the initial date of enactment, the President shall fix the term of each member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice

Chairman of the Board for a term of four years. The Chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified.

The Board of Governors shall receive an endowment from Congress, income from which is sufficient to pay its estimated expenses and the salaries of its members and employees, including amounts sufficient to provide for the acquisition by the Board in its own name of such site or building in the District of Columbia as in its judgment alone shall be necessary for the purpose of providing suitable and adequate quarters for the performance of its functions. After approving such plans, estimates, and specifications as it shall have caused to be prepared, the Board may, notwithstanding any other provision of law, cause to be constructed on any site so acquired by it a building or buildings suitable and adequate in its judgment for its purposes and proceed to take all such steps as it may deem necessary or appropriate in connection with the construction, equipment, and furnishing of such building or buildings. The Board may maintain, enlarge, or remodel any building or buildings so acquired or constructed and shall have sole control of such building or buildings and space therein.

The principal offices of the Board of Governors shall be in the District of Columbia. At meetings of the Board, the chairman shall preside, and, in his or her absence, the vice chairman shall preside. In the absence of the chairman and the vice chairman, the board shall elect a member to act as chairman pro tempore. The Board shall determine and prescribe the manner in which its obligations shall be incurred and its disbursements and expenses allowed and paid, and may place on deposit with the twelve health districts, sufficient sums to defray each district's estimated expenses and the salaries of its directors, officers, and employees, whose employment, compensation, leave, and expenses shall be governed solely by the provisions of this Act, specific amendments thereof, and rules and regulations of the Board of Governors not inconsistent therewith; and funds derived from income on endowments shall not be construed to be Government funds or appropriated moneys. Whenever a vacancy shall occur, other than by expiration of term, a successor shall be appointed by the President, by and with the advice and consent of the Senate, to fill such vacancy, and when appointed he/she shall hold office for the unexpired term of his/her predecessor.

The President shall have power to fill all vacancies that may happen on the Board of Governors during the recess of the Senate by granting commissions which shall expire with the next session of the Senate.

Nothing in this Act contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Health and Human Services, which relate to the supervision, management, and control of the Department of Health and Human Services and bureaus under such department, and wherever any power vested by this Act in the Board of Governors or District Agent appears to conflict with the powers of the Secretary of Health and Human Services, such powers shall be exercised subject to the supervision and control of the Secretary.

The Board of Governors shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress.

No health district may authorize the acquisition or construction of any district building, or enter into any contract or other obligation for the acquisition or construction of any district building, without the approval of the Board of Governors.

The Board of Governors shall keep a complete record of the action taken by the Board and by the National Health Policy Committee upon all questions of policy relating to health insurance regulation and supervision and shall record therein the votes taken in connection with the determination of policies and the reasons underlying the action of the Board and the Committee in each instance. The Board shall keep a similar record with respect to all questions of policy determined by the Board, and shall include in its annual report to the Congress a full account of the action so taken during the preceding year with respect to policies and operations and with respect to the policies determined by it and shall include in such report a copy of the records required to be kept under the provisions of this paragraph. The Chairman of the Board shall appear before the Congress at semi-annual hearings or more often as requested, regarding the efforts, activities, objectives and plans of the Board, the Districts, and the National Health Care Policy Committee with respect to the conduct of health insurance regulation and supervision.

United States Health District Boards of Directors

The business affairs of every United States Health District shall be conducted under the supervision and control of a board of directors.

District health boards of directors shall establish by-laws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

District health boards of directors, or duly authorized officers or agents, shall have all powers specifically granted by the provisions of this Act and such incidental powers as shall be necessary to carry on the business of regulating and supervising health insurance within the limitations prescribed by the Board of Governors.

Such boards of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C.

Class A shall consist of three members, without discrimination on the basis of race, creed, color, sex, sexual orientation, or national origin, who shall be chosen by and be representative of the health insurers doing business in the district.

Class B shall consist of three members, who shall represent the provider community and shall be elected without discrimination on the basis of race, creed, color, sex, sexual

orientation, or national origin, and with due but not exclusive consideration to the interests of physicians, hospitals, and health care professionals of all disciplines who are compensated by health insurers.

Class C shall consist of three members who shall be designated by the Board of Governors. They shall be elected to represent the public, without discrimination on the basis of race, creed, color, sex, sexual orientation, or national origin, and with due but not exclusive consideration to the interests of patients, employers, the government and other payers and consumers of health care services. The Board of Governors shall designate one of such Class C directors as chairman of the district board.

No Senator or Representative in Congress shall be a member of the Board of Governors or an officer or a director of a Health District.

No director of class B shall be an officer, director, or employee of any insurance company.

No director of class C shall be an officer, director, employee, or stockholder of any health insurance company or any health provider organization, or a licensed health care professional.

Directors of class A and class B shall be chosen in the following manner:

To elect Class A directors, the Board of Governors shall classify the insurance companies of the district into three general groups or divisions, designating each group by number. To elect Class B directors, the Board of Governors shall classify the provider organizations of the district into three general groups or divisions, designating each group by number. Each group in Class A shall consist of insurance companies of similar size and capitalization. Each group in Class B shall consist of provider organizations of similar size and capitalization.

Each insurance company shall be permitted to nominate to the chairman of the district health board, one candidate for director of class A and each provider organization shall be permitted to nominate to the chairman of the health district board one candidate for director of class B. The candidates so nominated shall be listed by the chairman, indicating by whom nominated, and a copy of said list shall, within fifteen days after its completion, be furnished by the chairman to each health insurance company and provider organization. Each health insurance company or provider organization shall authorize its president, or some other officer to cast the vote of the health insurance company or provider organization in the elections of class A and class B directors: *provided*, that whenever any insurance companies or provider organizations within the same district are subsidiaries of the same holding company, participation in any such nomination or election by such insurance companies or provider organizations, including such holding company if it is also an insurance company or provider organization, shall be confined to one of such insurance companies or provider organizations, which may be designated for the purpose by such holding company.

Within fifteen days after receipt of the list of candidates the duly authorized officer of a health insurance company or a provider organization shall certify to the chairman his/her first, second, and other choices for director of class A and class B, respectively, upon a preferential ballot upon a form furnished by the chairman of the district health board of directors.

Any candidate having a majority of all votes cast in the column of first choice shall be declared elected. If no candidates have a majority of all the votes in the first column, then there shall be added together the votes cast by the electors for such candidates in the second column and the votes cast for the several candidates in the first column. The candidate then having a majority of the electors voting and the highest number of combined votes shall be declared elected. If no candidate has a majority of electors voting and the highest number of votes when the first and second choices shall have been added, then the votes cast in the third column for other choices shall be added together in like manner, and the candidate then having the highest number of votes shall be declared elected. An immediate report of election shall be declared.

District health boards of directors shall have the authority to appoint a president, vice presidents, and such officers and employees as are not otherwise provided for in this Act, to define their duties, and to dismiss at pleasure such officers or employees. The president shall be the chief executive officer of the health district and shall be appointed by the board of directors, with the approval of the Board of Governors, for a term of five years; and all other executive officers and all employees of the district shall be directly responsible to him/her. The first vice president of the board shall be appointed in the same manner and for the same term as the president, and shall, in the absence or disability of the president or during a vacancy in the office of the president, serve as chief executive officer of the board. Whenever a vacancy shall occur in the office of the president or the first vice president, it shall be filled in the manner provided for original appointments; and the person so appointed shall hold office until the expiration of the term of his/her predecessor.

Class C directors shall be appointed by the Board of Governors. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the district board of directors and as "District Agent." He/she shall make regular reports to the Board of Governors and shall act as its official representative for the performance of the functions conferred upon it by this Act. One of the directors of class C shall be appointed by the Board of Governors as deputy chairman to exercise the powers of the chairman of the board when necessary. In case of the absence of the chairman and deputy chairman, the third class C director shall preside at meetings of the board.

Directors of district boards shall receive, in addition to any compensation otherwise provided, a reasonable allowance for necessary expenses in attending meetings of their respective boards, which amounts shall be paid by the respective health districts. Any compensation that may be provided by district boards of directors for directors, officers or employees shall be subject to the approval of the Board of Governors.

At the first meeting of the full district board of directors of each Health District, it shall be the duty of the directors of classes A, B and C, respectively, to designate one of the members of each class whose term of office shall expire in one year from the first of January nearest to date of such meeting, one whose term of office shall expire at the end of two years from said date, and one whose term of office shall expire at the end of three years from said date. Thereafter every director of a Health District chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the several classes of directors may be filled in the manner provided for the original selection of such directors, such appointees to hold office for the unexpired terms of their predecessors.

National Health Policy Committee

There is hereby created a National Health Policy Committee (hereinafter referred to as the "Committee"), which shall consist of the members of the Board of Governors and four representatives of the Health Districts to be selected as hereinafter provided. Such representatives shall be presidents or first vice presidents of Health Districts, and beginning with the election for the term commencing (date), shall be elected annually as follows: One by the boards of directors of the health districts of Districts #1, #2, and #3, one by the boards of directors of the health districts of Districts #4, #5 and #6, one by the boards of directors of the health districts of Districts #7, #8, #9, and one by the boards of directors of the health districts of Districts #10, #11 and #12. In such elections each board of directors shall have one vote; and the details of such elections may be governed by regulations prescribed by the Committee, which may be amended from time to time. An alternate to serve in the absence of each such representative shall likewise be a president or first vice president of a health district and shall be elected annually in the same manner. The meetings of said committee shall be held at Washington, District of Columbia, at least four times each year upon the call of the chairman of the Board of Governors or at the request of any three members of the Committee.

No health district shall engage or decline to engage in Policy Committee deliberations except in accordance with the direction of and regulations adopted by the Committee. The Committee shall consider, adopt, and transmit to the health districts and all health insurers, regulations relating to the solvency, marketing, sale, and administration of all health insurance products and services.

Powers of the National Health Policy Committee

The National Health Policy Committee shall use its authority to regulate and supervise all health insurance marketed and sold in the United States.

Generally, these regulatory and supervisory powers shall include: solvency requirements, market conduct, regulation of intermediaries and other service persons.

Solvency requirements shall include, but not be limited to: solvency margins, financial reporting, audit requirements, accounting practices, actuarial opinions, risk assessment, capital structure, examinations, investments, and reinsurance.

Market conduct shall include, but not be limited to: insurance policy forms; regulation of rates, guaranteed issue, renewability and trade practices; covered benefits and claims practices; patient protections; and rule making pertaining to all financial transactions between insurers and the insured, and between insurers and providers of health care services, and the encounter information (patient demographics, clinical descriptors, diagnostic and therapeutic interventions, and outcomes) derived there from.

Regulation of intermediaries and other service persons shall include, but not be limited to: agents, brokers, producers, and consultants.

At its inception, the National Health Policy Committee shall have the power to continue, modify or discontinue the various provisions of ERISA, COBRA, and HIPAA as they pertain to the regulation and supervision of health insurance products and services.

Rule making pertaining to financial transactions between insurers and the insured, and between insurers and providers of health care services shall also apply to the Center for Medicare and Medicaid Services (CMS) and to all state Medicaid plans. Such rule making shall enable standardization and simplification of the administrative functions attendant to the delivery of health insurance services and claims handling processes, with elimination of unnecessary work that does not add value, and automation of the work that remains.

It is the express desire of the Congress that these powers shall enable reform of the health care payment system, with authority vested in the National Health Policy Committee to implement changes in the payment and reimbursement system; however, said authority expressly does not include the authority to set payment rates or amounts of reimbursement. These determinations shall be left to CMS, state Medicaid plans, and the negotiation of rates and reimbursements between insurers and providers.

It is the express desire of the Congress that these powers and authorities shall enable the National Health Policy Committee to establish standards for market conduct that will improve performance of the health care system, and foster transparency of said performance among all parties. Toward that end, the United States Health Board shall have the authority to develop, maintain and utilize data bases of information that derive from all financial transactions and encounter information between insurers, the insured and providers of health care services. Such data bases, appropriately modified to maintain patient confidentiality, shall be made available to the public under rules adopted by the Board of Governors. The goal of public disclosure is to enable research and analysis of clinical effectiveness, patient satisfaction and cost efficiency, and the transparency thereof.

National Health Advisory Council

There is hereby created a National Health Advisory Council, which shall consist of as many members as there are health districts. Each health district by its board of directors shall annually select from its own district one member of said council, who shall receive such compensation and allowances as may be fixed by his board of directors subject to the approval of the Board of Governors. The meetings of said advisory council shall be held at Washington, District of Columbia, at least four times each year and more often if called by

the Board of Governors. Vacancies in the council shall be filled by the respective health districts, and members selected to fill vacancies, shall serve for the unexpired term.

The National Health Advisory Council shall have power, by itself or through its officers, (1) to confer directly with the Board of Governors on general health care insurer, provider and consumer conditions; (2) to make oral or written representations concerning matters within the jurisdiction of said board; (3) to call for information and to make recommendations in regard to health care insurance offerings in the various districts, the purchase and sale of insurance products, and the general affairs of the health care system.

It is the express desire of the Congress that the twelve health districts of the United States Health Board system continue to support, fund and facilitate local quality improvement and payment reform efforts to serve as best practice demonstrations for evaluation at the district level, and then consideration for adoption at the national level.