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# Politics of Federal Health Policy, 1960-75: A Perspective

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## INTRODUCTION

Although the idea of establishing a Federal insurance program to cover the major costs of health care for the elderly was not new in the late 1950s, it was only when John Kennedy became a presidential candidate that the national debate on the issue began in earnest. But it would be almost 5 years later before the issue was finally resolved.

During that 5-year period, the desirability of establishing such a program was to be a continuing debate that would be argued on broad philosophical grounds, not on the specifics of the bills introduced in Congress. The history of the actions taken, the hearings, the close votes in the Senate, and so on, has been covered in several books for those interested in that period. I do not cover all that action here. Instead, I do discuss how the committees of jurisdiction worked in early 1965 on fashioning the bill that finally became law. In this process, I concentrate more on the Committee on Ways and Means in the House than on the action in the Senate Finance Committee, primarily because Ways and Means formed the final shape of the program and secondarily because I was more closely involved with that committee during the period covered here—first as a member of the hospital insurance group in the Social Security Administration; second as the first chief of staff for the Health Insurance Benefits Advisory Council; third as a staff person in

the Congressional Research Service; and then as a professional staff person for the Committee on Ways and Means.

## HISTORY OF THE COMMITTEE ON WAYS AND MEANS

The committee was established in the very first Congress in the late 18th century. Its jurisdiction at that time included not only all revenue measures but also all appropriations. (It was not until the Civil War that a separate Committee on Appropriations was established.) In the 1930s, the jurisdiction of the committee over various public assistance programs for the old, the disabled, and families with dependent children, maternal and child health, as well as social insurance programs for retired workers and their dependents and survivors, was established when the original Social Security Act was passed in 1935.

The Federal Government had, of course, been involved to some degree in health matters since the beginning of the Republic. The Public Health Service was established very soon after the adoption of the Constitution, primarily to provide health care for American merchant seamen. (That's why we see doctors and nurses wearing naval-type uniforms on certain public occasions.) Because a healthy merchant marine was viewed as a necessity for the American economy of that day, it should not be surprising that what is now the Committee on Interstate and Foreign Commerce was given jurisdiction over that program and later, over most health programs of the Federal Government.

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## **COMMITTEE ORGANIZATION: EARLY 1960s THROUGH 1974**

The Committee on Ways and Means was widely regarded, correctly, as the most powerful and influential committee in the House, and probably the Senate, also. Seats on the committee were therefore prized by members of both parties. The reasons are varied but powerful. The committee's jurisdiction included raising of all Federal Government funds, including all internal revenue measures, taxes on imports, and the size of the public debt. Its jurisdiction on the spending side included all of the programs under the Social Security Act (including all public assistance programs, Social Security benefits for retired or disabled workers, survivors of insured workers, maternal and child health, and the unemployment insurance program). Thus, it could be said that the committee's jurisdiction included raising all of the funds necessary to operate the government and included programs that spent more than one-third of all the funds raised!

But there was yet another reason for the power of the committee; its Democratic members acted as the Committee on Committees for the Democratic caucus, a role that yielded considerable political power; all the Democratic members of the House had to seek approval from the caucus to get assigned to the committee of their choice. It was also the custom at that time that when the committee reported a bill to the full House for passage, the committee would be given a rule under which no amendments were allowed; the full House had two choices, send the bill back to the committee or pass it. This custom was justified on the grounds that to open the tax code to amendments on the floor would have resulted in irresponsible changes in the tax code. It is also why the committee, in conference with the Finance Committee,

did not generally look with favor on Senate floor amendments. Moreover, a constitutional provision ensured that only the House of Representatives could initiate revenue-raising measures. During this period the committee had 25 members; 15 Democrats and 10 Republicans.

Up until the late 1960s, the committee had no staff to work on social security programs; the typical way the committee worked was to hold public hearings on a proposal from the administration. These hearings were followed by private sessions of the committee to write a bill. During this private session, the committee would sit around movable tables on the floor in front of the dais where members sat during public hearings. Staff from the U.S. Department of Health, Education, and Welfare (DHEW)—Bob Ball, Bob Myers, and perhaps other high officials from the Department—would sit before a table in front of the committee. The Department people would present their proposals, and members would question them, ask about the costs, and so on. Out of these sessions, which could go on for many days, a bill would be drafted by House Legislative Counsel lawyers, and the committee would approve the bill.

In the meantime, experts from the Department, not the committee, would prepare the complete committee report. Although one or two people from the Legislative Reference Service might sit in those markup sessions, no other experts were used by the committee in making its decisions. The actual drafting of the committee-approved bill would be performed by attorneys in the House Legislative Counsel's office—one or two DHEW people participated in this process, but no committee staff were present. (This procedure varied when the committee took up internal revenue tax matters—the staff of the Joint Committee on Internal Revenue,

with several professional staff members and experts from the Treasury Department, would both sit before the committee—otherwise the procedure was much the same.) This was essentially the procedure used when the committee took up Medicare early in 1965.

The election of 1964 not only kept President Johnson in the White House by a large margin, it gave the Democrats more than a 2 to 1 majority in the House of Representatives. This meant two important things: The votes for Medicare in the whole House were clearly there, and the Committee on Ways and Means would have 17 Democrats and 8 Republicans to reflect the division in the whole House. It was now generally accepted that Medicare would pass—the Speaker of the House had for several years made each new Democratic member of the committee swear to support Medicare as the price for getting a seat on the committee. Chairman Wilbur Mills knew he had the substantial majority he always believed necessary to pass Medicare.

In early 1965, Mills decided that public hearings were not necessary; he could move immediately to markup sessions. Public hearings had been held just a few months before and would not likely yield anything new. Moreover, public testimony had hardly dealt with the specific provisions of the bill. The Medicare debate had focused on the larger issues of the role of government, the basic need for the benefits and so on. In fact, public awareness of even the major provisions of the proposal was quite low. For example, much of the public had come to believe that the proposal would cover many more benefits than the hospitalization (or substitutes for hospital care) actually covered, particularly physician services. The administration had not included physician services in the proposed bill primarily to mute the objections of physician organizations, whose

main problem with the proposed program was its compulsory feature. Although the actual title of the bill was Hospital Insurance for the Aged, the press had been using the name Medicare for years. These factors were to influence the final form of the legislation.

Even though Mills had concluded that public hearings were not necessary, he felt the need to have those who would be affected by the bill tell the committee in specific terms how it should be changed to ensure its workability. He accomplished this by inviting interested parties to come before the committee, one by one, to present their suggestions and comments. During this private process, which went on for many days, DHEW officials took notes on all of the comments. All of the major interested witnesses invited to appear agreed to limit their remarks to suggestions on how to make the program more workable (with the exception of the American Medical Association, which testified at the closed meeting but essentially refused to get into details on the bill; this position changed shortly after enactment later in the year).

When this process was completed, the committee continued to meet in private with DHEW officials, including Bob Myers, Bob Ball, and Wilbur Cohen, to go over the comments made by the public witnesses. These officials had been working their staffs to recommend which of the suggestions made by the witnesses were acceptable, which were not, and why. Essentially, the Department people acted much like committee staff would act today. Mills later had that portion of the meetings with public witnesses printed and made public. The portion during which the final form of the bill took shape was recorded verbatim, as were all committee meetings, but as far as I know, this has not been released for general distribution. One copy was furnished to DHEW lawyers after

enactment as an aid in establishing the policies necessary for administering the program.

After enactment of the final legislation, the administrators of the program did not wait for representatives of the organizations affected by Medicare to approach them; rather, a large and sustained initiative was made to involve all of those who would be affected by the new law in planning and setting policies for the new program. Literally hundreds of people were assembled in small groups in Baltimore over a period of months to learn about the new legislation and tentative plans for its implementation.

The new law had also established the Health Insurance Benefits Advisory Council to advise the administrators on the policies the government would use in administering the program. This group, selected by the Secretary of Health, Education, and Welfare, met quite often beginning in the early months after enactment, but I will not go into the substance of those meetings, except to point out that the council did not hold their meetings in public, although their recommendations were released in public reports. The impetus for that decision came not from the program administrators but from members of the Council itself, many of whom did not want the organization they represented to know what they said in those meetings. One member told the group that he would not be able to "tell it like it is" if the meetings were held in public. But how did the committees themselves react following enactment of the new program?

In the Senate, Chairman Long announced that the Committee on Finance had hired one person to monitor the program for the committee. Thus, Jay Constantine, the terror of new lobbyists, moved from the Committee on Aging to the Committee on Finance. In the House, little

changed for several years. The committee did not add new staff to work on the Social Security programs until 2 years later, but that did not include Medicare. In the Legislative Reference Service (later the Congressional Research Service), there was some action. Several new employees were added with experience in Social Security, including one on Medicare, as well as others on cash Social Security benefits, public assistance, and unemployment compensation. During the period 1966-70, these additional resources were used by committees in both Houses to some degree, but when legislation was taken up by Ways and Means in these areas, the custom of having Department people sit before the committee in executive session did not change. The Finance Committee during this period did have the staff and people from the Library of Congress attend committee meetings and assist in writing committee reports. That committee had Department representatives in markup sessions only on a sporadic basis. By 1970, however, things did begin to change in the Ways and Means Committee.

Before I describe those changes, it may be useful to comment on how various groups who had a stake in Medicare responded to the new legislation during the period just after enactment. As indicated earlier, the Medicare managers had taken the initiative in working with all of the groups that had a stake or role in its administration. Many of those groups had never had to deal with the Federal Government—others only sporadically. Now their economic future could be substantially affected by how Medicare was administered and changed. Thus, many organizations responded to this new environment by hiring lobbyists, establishing Washington offices, and increasing their staffs, as well as in other ways. Some groups were organized for the first time—in some cases to get

included in Medicare. These efforts were viewed as necessary to deal with both the Medicare administrators and Congress. The efforts at the congressional level were aimed not just at changes in the law but to get Congress to intervene in the policymaking process in the executive branch. These were major changes for most health-related organizations, and the numbers of new organizations to lobby Congress and the executive branch were impressive. These organizations did not, of course, necessarily have the same view on the same issue.

Of course, many health organizations had been used to dealing with the Public Health Service and the Food and Drug Administration on issues of research, health education, the drug approval process, and so on. But organizations of physicians, hospitals, medical educators, and others now had also to deal with a new law, new administrators, and different committees in Congress.

During this period anyone who wanted to influence Congress, or have someone in Congress influence the Medicare administrators, had to deal directly with the members, or their staffs, because there was no committee staff to deal with, except for the Finance Committee. But two things happened that were to change this situation. First, Richard Nixon was elected President; the Democrats on the committee would be dealing with Republican officials. Second, a new chief counsel had been appointed to the Committee on Ways and Means, who, when he was assistant chief counsel, had developed a strong interest in having the committee depend less on executive branch people and more on its own resources. He had shown increased skepticism about whether the committee was given the whole story by administration officials.

## THE PERIOD 1970-75

One of the ways that the Ways and Means Committee had defended itself against charges of being too powerful was to point out how frugal it was in funding committee operations, not hiring lots of staff and working the members long hours. As indicated earlier, the committee was handling its immense jurisdiction without subcommittees, which required the full committee to work on all legislation. Moreover, given the large number of bills referred to it and the number of changes in law recommended by the executive branch, the committee worked long days either in public hearings or markup sessions. In some cases, markup sessions were held on 3 or 4 days of a week, and public hearings were held on other days of the same week on an entirely different subject.

In 1969, the new Nixon administration proposed a major reform in the Nation's welfare system. The relatively new chief counsel of the committee wanted the committee to have staff expert enough to deal with such a major effort. There was also some feeling that in dealing with a Republican administration, more independent expertise working for the committee would help ensure that administration officials would be more open in the discussions before the committee. It was at this time, the beginning of 1970, that an additional staff person was added to the committee to work on programs in the Social Security Act, including welfare, Medicare, and Medicaid. Somewhat earlier, an additional staff member had been added to work primarily on unemployment compensation. Both had been known to the committee through their work at the Library. I was the one given responsibility for all the public assistance programs, Medicaid, Medicare, and maternal and child health.

The executive sessions of the committee remained private, and the practice of having administration officials sitting before the committee and answering questions and defending their positions did not change; but now a member of the staff would sit with the members and would be ready to question statements made by administration witnesses or provide information they did not. This method of operation continued for the next several years, during which time major legislation in welfare reform occupied large chunks of the committee's time, though it was only partially successful. Major changes in Medicare and Medicaid were also enacted in late 1972 as part of a large bill amending all of the Social Security programs. Included among those changes were coverage of the disabled receiving Social Security benefits under Medicare and virtually all those in the general population with end stage renal disease.

The addition of staff to the committee during this period, both in the Senate Finance Committee, like Jim Mongan, and in the Committee on Ways and Means, meant that all members of Congress, not just committee members, could refer lobbyists and others directly to the staff members of the committee—this was never done directly with staff of the Congressional Research Service. Some lobbyists had been frustrated in not being able to meet with someone who could understand what they were talking about. When the committee began to employ its own professional staff, it was made clear from the outset that their services would be available to all members of the committee. And in fact, members of both the majority and minority came to use the professional staff quite extensively.

At about this time, in 1971, a new, private effort at informing debates on health issues was launched. Judy Miller Jones' Health Policy Forum has had a positive impact on

health debates for a quarter of a century now. The forum not only gained an early reputation for putting on quality programs, it created, intentionally or not, a loosely knit organization of people, public and private, involved in Federal health policy who might very well never have met without the forum.

The year 1970 was the beginning of another organization that also still plays an important role in health policy, and not just at the Federal level. The Institute of Medicine was established as part of the National Academy of Sciences, a congressionally chartered organization established in the 19th century. The Institute's role in health policy hardly needs to be described to this group. But I do take some pleasure in having established the precedent for a congressional committee report to suggest strongly that the executive branch use the new organization to conduct a study called for in the law. That study on Medicare reimbursement issues in teaching hospitals was, I believe, the first on a Medicare issue for the new organization.

By the time the Nixon administration proposed a form of national health insurance in 1973, the staff of the Committee on Ways and Means had been increased by one more, to specialize in public assistance, which freed up one existing staff person, me, to work only on health matters. But shortly after this time, the committee was required, under a change in the House rules, to meet in open session during legislative markups.

The debate on national health insurance had really begun in the early 1970s, when Senator Edward Kennedy and labor started working on a specific proposal. There was widespread belief beginning in the early 1970s that national health insurance would eventually create a major debate in Congress and that some kind of bill would become law.

In an effort to demonstrate that the committee was preparing itself for the subject, it was decided that a small chart book on the existing health industry should be prepared for the committee's use. It would also be useful as a counter to the critics of the committee, who said that its jurisdiction was too large to be handled appropriately. This chart book was excellent and served its purposes well (Committee on Ways and Means, 1971). Just as the print became available, Senator Kennedy asked Mills to have me meet with him and his staff to discuss national health insurance. I took a copy with me. The Senator wanted to learn something about the person who would be advising members on health insurance issues. But the major point I want to make is that this chart book was prepared in its entirety by Dorothy Rice and her staff in the Social Security Administration, even though we printed it as a committee document! The chart book was made public, of course, to show that the committee was really on top of the subject. This happened, as I recall, in the summer of 1971.

Three years later, in early 1974, when the national health insurance issue was about to be taken up in public hearings and then in markup sessions, the staff of the committee could prepare a much larger and more comprehensive background book for national health insurance without any direct help from, or even the knowledge of, people in the executive branch.

Although some of the data came from publications of government agencies, most of it was prepared by committee staff and staff from the Congressional Research Service, which had increased substantially the numbers of people who worked in the health area.

The chief counsel of the committee took great pleasure in crafting these words in the foreword of the 574-page background

book: "It should be emphasized that this study was produced in its entirety by the staff of the Committee on Ways and Means, with the assistance of those noted above, and is not the product of, or in any respect developed by, any agency or personnel of the executive branch of the Government." As earlier, the book was made public and it became a bestseller for the U.S. Government Printing Office. And it did serve to indicate to Congress, the health insurance and health care industries, and the public at large that the committee was prepared to take on such a large subject.

After the public hearings on health insurance were over in late spring of 1974, the Committee on Ways and Means began work on a possible bill in the summer. There were no administration officials sitting at the table before the committee. Only committee staff sat there to answer questions posed by the members. Remarkably, the committee did not change its practice of sitting around movable tables and chairs below the dais where they sat during public hearings. (But that was the last time; it was back up to the dais in later sessions.)

As might be expected, the large Ways and Means hearing room had standing room only! But even more major changes in the committee's way of doing business were just around the corner.

Changes in the organization and procedures of Congress had long been discussed in congressional circles and elsewhere. By the early to mid-1970s, they were gradually being introduced. The Budget Reconciliation Act established budget committees and set new requirements for actions by all of the committees in Congress. In the process, some powers were lost by all of the committees.

Changes in the rules of the House of Representatives were made that required open committee meetings—the reason

why the national health insurance markup sessions were held in public in the summer of 1974. And other, farther-reaching changes in the way the committee was organized and did its work became effective in 1975. It was these changes that modified the committee's jurisdiction in health and that required the establishment of several subcommittees, including one on health, but with a change in the jurisdiction. It was at this time also that the number of committee members was changed from 25 to 37.

One of the results of these changes was an immediate and substantial increase in the number of committee staff. There were now more subcommittees than the number of staff just a few months earlier. The proliferation of subcommittees had not been limited to the Ways and Means Committee—as one Member said to me, “I used to call my friends in the House by their first names, now I just call everybody Mr. Chairman.” Many of these new chairmen had to undergo an intense training period to get up to speed on the subject area of their new subcommittees. That hadn't been necessary when there was a single chairman responsible for everything. For lobbyists and others interested in specific programs, there were more staff available to meet with, and in that sense, there was more access to committee staff than earlier.

There were two other changes in committee operations that reduced its power. The Democrats on the committee no longer acted as the Committee on Committees for the Democratic caucus.

The second change that reduced the influence of the committee somewhat has already been mentioned, the modification in health jurisdiction. I will not comment on this change, except to report the following: The individual who was given the responsibility for writing the actual words that would make that modification had no

experience in or with Congress. The person was a temporary employee of the Speaker's office. He saw the change as simple and obvious and saw no need to listen to anyone else's opinion about the matter. He went back to Oklahoma a short time later. His words define the jurisdiction split between Ways and Means and the Commerce Committee to this day. The words used led the parliamentarian of the House to refer most bills that would change the health programs in the Social Security Act to both Ways and Means and the Commerce Committee.

Thus, the committee's power and influence had been modified substantially by changes coming from three sources: the whole Congress, as in the case of the budget process, the whole House, in the case of committee jurisdiction and number of members, and the Democrats of the House, in the case of committee assignments.

## CONCLUSION

I hope that the descriptions of how congressional health policy was handled when Medicare was enacted, and for the 10 years after, have provided some idea of the political atmosphere of the times. The general political atmosphere in the health care field at the end of this period can be deduced from the fact that it was the Republican party and a Republican President who could propose substantial increases in the role of the Federal Government in such large and sensitive areas as public welfare and health care for the general population.

That there have been sea changes in how the proper role of the Federal Government is perceived by both political parties and the public at large is as obvious as the front pages of our newspapers and the subjects covered on our nightly television broadcasts. But less obvious, or less talked

about, are the changes in the way the debates in these matters are now carried on.

Perhaps one little true story will illustrate both of these changes. In the summer of 1974, as indicated earlier, the Committee on Ways and Means held markup sessions on a variety of national health insurance proposals—including that of the Nixon administration—in public sessions of the committee. After many days of discussions, and then 13 to 12 votes not to approve any of the various proposals or combinations, the committee concluded that it could not approve any plan and recessed. On that same day, shortly after the close of the meeting, two members of the committee, who were still members of the committee early in 1996, asked to meet with me in the room behind the hearing room to see if

there was any possibility of forming a proposal that they could both support and that could get approval in the committee. The conclusion arrived at, after some discussion, was that it would not be possible. The two members left the room disappointed. The two members were the chairman and the ranking member of the Committee on Ways and Means in the Congress that adjourned in 1996.

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