



Congressional Democrats Move to Expedite Health Reform Decisions

Congress Returns to Ramp-up Health Reform and Budget Decisions

Last week the House returned for routine floor business and critical White House meetings on health reform. Intense late-night meetings at the White House produced some progress on financing health reform as the President and congressional Democrat leaders rushed to get CBO scoring of the decisions made in an attempt to pass the legislation before a possible Republican senatorial victory in Massachusetts drops the Democrat margin in the Senate below the 60 votes needed to pass health reform. The vote to replace former **Senator Ted Kennedy** takes place in Massachusetts this Tuesday. Massachusetts **State Senator Scott Brown (R)** has vowed to vote against the current health reform bill while his Democrat opponent, **MA State Attorney General Martha Coakley**, said she would be the 60th vote for the legislation.

The focus on health reform is also likely to delay the White House's release of the FY 2011 federal budget beyond the February 1st target date. **House Budget Chairman John Spratt** said "the Administration has told me they are going to have a very strict and tight budget this year and that there will be provisions in it to reduce the deficit in

the out years. What form that is going to take, I do not know. We are waiting to see." He also expressed optimism that the House and Senate would reach a compromise and enact PAYGO legislation, which would require that tax cuts and increases in discretionary spending be offset. Part of the discussion is the Conrad/Gregg proposal for a military-base-closing-like process (S. 2583) to reduce long-term entitlement spending, including Medicare/Medicaid, etc. The Conrad/Gregg provision could be brought up this week in the Senate in connection with legislation to increase the federal debt limit, H.J.Res. 45.

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Health Care Reform Update

President Flexes the Strong Arm

After meeting with labor leaders last Monday and listening to their complaints about the Senate's "Cadillac" health benefit excise tax, **President Obama** met with Democrat congressional leaders into the wee hours late Thursday and again on Friday to forge an agreement on this and other issues. Under a deal with organized labor, the Senate bill's thresholds for the 40% excise tax would be raised as follows: individual plans costing \$8,900 annually, up from \$8,500, would be taxed, and family plans costing \$24,000 annually, up from \$23,000, would be taxed while vision and dental insurance would not be included in the thresholds beginning in 2015. The threshold levels would be adjusted to account for age, gender, and geographic areas to keep people in high-cost groups from being disproportionately affected by the tax. While the excise tax would go into effect in 2013 for most plans, collectively bargained and state and local plans would not be

taxed until 2018. These same plans would be allowed to negotiate into the insurance exchanges in 2017. According to the White House, "The next step in the process is to evaluate the costs and savings associated with the various proposals for each tenet of the legislation." However, a number of critical issues remain unresolved, with discussions expected to continue into this week on the structure of the health insurance exchanges, immigration, abortion and the final details on how to pay for the compromise. CBO is being put under pressure to score the agreements already made in a timely fashion. **House Speaker Nancy Pelosi** has apparently promised members that the final House/Senate compromise will be available for 72 hours so they can review the legislation before voting. Also, the President is reported to express support for stronger insurance regulations and a reduced time frame for exclusivity for generic biologics (from 12 to 10 years). If the

reduced time frame for patent protection is, in fact, in the cards, the drug industry could pull back its support for the legislation. Further rankling the drug industry, which agreed early in the debate to an \$80 billion Part D cost-cutting move with the White House and Senate leaders, **Senators Charles Schumer and Amy Klobuchar** broke with the Senate position and indicated their support for the House provision which would give HHS the authority to negotiate Medicare drug prices (overturning the ban on such negotiations under the MMA). In this connection, GAO released a study finding that in the period 2000-2008 more than 400 prescription drugs had price increases of at least 100%. The health insurance industry also came under further attack with 19 Senators writing the President and Democrat leaders to adopt the House provision which would repeal the antitrust exemption for such entities under the McCarran-Ferguson law.

Constitutional Issues Being Addressed

With the Senate's mandate for states to establish insurance exchanges under fire as being unconstitutional, House negotiators say discussions are underway to meld the House national exchange with some variation for states to assume the exchange role voluntarily under certain conditions. Also, **Senator Ben Nelson (D-NE)** sent a letter to **Senate Majority Leader Harry Reid** requesting that the special deal for Nebraska to receive full federal funding for Medicaid expansions "be

replaced with a provision giving all state governments the same treatment regarding the state match for the new Medicaid expansion....I believe I have been clear that my intentions during all stages of negotiations were not that the State of Nebraska be given a special deal, but rather that all states be given the same tools to address an unfunded federal mandate...."

Deal-making Backlash

Republicans were quick to shout down the White House deal-making. **Senate Republican Conference Chairman Lamar Alexander** issued a press release criticizing the “unprecedented horse-trading” behind closed doors, including the special deal for organized labor on the Cadillac excise tax. Small business organizations were incensed over the special deal for unions and lashed out at the Administration for walking away from small business concerns. However, in ramping up support from House Democrats, the President stated “If Republicans want to campaign against what

we’ve done by standing up for the status quo, for insurance companies over American families and businesses, that is a fight I want to have....” The hospital and drug industries could also add their voice of concern as they come under pressure to ante up more than under previous White House agreements in light of the reduced revenues expected under the excise tax phase-in. Already a group of 74 health care provider groups have asked Democrat leaders to reject the Senate’s Independent Payment Advisory Board, saying it would not be accountable to anyone but **President Obama** and future presidents, preventing

providers and advocacy groups from lobbying Congress on Medicare reimbursement issues. Even with the recent compromises, **Senator Chris Dodd** (who announced this will be his last term) said that health reform “is hanging by a thread” given the demands from various groups and Senators, including **Senators Ben Nelson, Blanche Lincoln and Joe Lieberman**. The ranking member on the House Budget Committee, **Rep. Paul Ryan**, has already called on his Republican colleagues to campaign in 2010 to repeal any health reform passed this year.

Legislation’s Inevitability Yields Last Minute Demands

A letter to **House Speaker Nancy Pelosi and Senate Leader Harry Reid** from 11 groups--including the American Benefits Council, America’s Health Insurance Plans, the Blue Cross and Blue Shield Association, the U.S. Chamber of Commerce and the ERISA Industry Committee--requested that the effective date for various insurance reforms be delayed until 12 months after final regulations are issued.

MedPAC on 2011 MD Medicare Payment Levels

Last week the Medicare Payment Advisory Commission recommended that physicians and other Part B providers receive a 1% increase in reimbursements in 2011. It is estimated the change will increase Medicare spending by \$2 billion for 2011 and more than \$10 billion over five years. The recommendation will be included in MedPAC’s March report to Congress which will also urge Congress to establish a budget-neutral payment adjustment for primary care services.

CBO Scores Senate Bronze Plans

At the request of **Senator Olympia Snowe**, CBO released an analysis of the cost of the so-called “Bronze” lowest-cost health insurance plan required to be offered under the Senate’s health insurance exchange mandate. CBO said the Bronze plans would average between \$4,500 and \$5,000 for individuals in 2016 while such plans for families would average between \$12,000 and \$12,500. These substantial premium levels are anticipated even though the Bronze plan is the lowest cost plan at 60% of the actuarial value of the essential benefit package. CBO also provided an analysis of the premiums small employers would pay if they purchase a bronze plan for their employees. The conclusion was that the cost would be even more for many small businesses due to demographic, geographic and other factors.

MedPAC on 2011 Hospital Update

MedPAC also voted to give hospitals a full market-basket inpatient and outpatient payment update for FY 2011. The hospital update is estimated to be 2.4% based on the rate of change in the market-basket index and considering the implementation of the pay-for-performance program. MedPAC also voted to adjust hospital payments starting in 2011 to recover overpayments that have resulted from coding and documentation changes. If adopted, this change could result in HHS reducing the inpatient prospective payment system update by

up to 2% in 2011, 2012, and 2013. MedPAC also recommended reductions in Medicare spending for other providers as follows: a decrease in dialysis spending of \$50 million to \$250 million; a decrease in skilled nursing facility spending of \$250 million to \$750 million; a decrease in inpatient rehabilitation facility spending of \$50 million to \$250 million; a decrease in long-term care hospital spending of \$50 million to \$250 million; and a decrease in hospice spending of \$50 million to \$250 million.

Recently Introduced Health Legislation

H. RES. 1004 (NORTHWESTERN UNIVERSITY FEINBERG SCHOOL OF MEDICINE), congratulating the Northwestern University Feinberg School of Medicine for its 150 years of commitment to advancing science and improving health; **DAVIS** of Illinois; to the Committee on Education and Labor, Jan. 12.

H.R. 4452 (OBESITY), to amend the Public Health Service Act to provide for a national program to conduct and support activities toward the goal of significantly reducing the number of cases of overweight and obesity among individuals in the United States; **NORTON**; to the Committee on Energy and Commerce, Jan. 13.

H. RES. 1011 (DISEASE AWARENESS), recognizing the importance of cervical health and of detecting cervical cancer during its earliest stages and supporting the goals and ideals of Cervical Health Awareness Month; **HALVORSON**; to the Committee on Energy and Commerce, Jan. 13.