



Tsunami in Massachusetts Senate Race Changes Course of Health Reform Debate

Last week the Senate struggled, not only on health reform issues, but with the accelerating national debt issues that threaten the sustainability of federal and private health coverage and the recovery of a weak economy. On Thursday the Senate defeated a Thune amendment to legislation to increase the statutory debt limit by \$1.9 trillion that would have ended the Troubled Asset Relief Program (TARP). The amendment would have denied the remaining \$320 billion of TARP funds to be used for a House or Senate jobs bill which may include further health insurance subsidies for the unemployed. The debate on the debt limit bill continues this week with an amendment to create a deficit-reduction commission expected to be offered by Senate Budget Chairman Kent Conrad and ranking member Judd Gregg. The amendment is not expected to garner the votes necessary for passage; however, if the amendment fails, the President is considering an option to create a similar commission by executive order. Republicans are unlikely to endorse such an executive order, given their concerns that the presidential appointees to the commission would endorse a Democrat agenda tooled for the fall 2010 elections. Under this White House deal, House and Senate Democratic leaders would commit to holding votes on the presidential commission's recommendations after the November elections. In addition, the Senate would agree to pass a PAYGO bill that would include paygo exemptions as follows: the minimum tax and estate taxes would be limited to two years and physician

payment increases under Medicare would be exempted for five years. As stated, the so-called "Doc fix" to the controversial Medicare physician payment SGR formula is wrapped up in the debt-limit debate as well as the health reform debate. However, with health reform on hold for the moment, the March 1st deadline delaying 2010 cuts to physicians under Part B, which was included in the defense appropriations law, is fast approaching. The AMA, AARP, the Military Officers Association of America have launched efforts to persuade Congress to pass a permanent fix, such as in the House-passed bill, H.R. 3961, which has a \$210 billion 10-year cost. How a 59-41 Democrat-Independent/Republican ratio in the Senate will influence this outcome remains to be seen.

Inside

What can "Brown do for you"?	2
Health Reform Angst	2
MedPAC on In-Office Ancillary Care/Home Health Payments	3
Recently Introduced Health Legislation	3

Health Care Reform Update

What can “Brown do for you”?

That’s what the President and congressional Democrats and Republicans were trying to determine last week in the wake of the surprising win by **Massachusetts state senator Scott Brown** in his bid to assume the U.S. Senate seat left vacant by the death of **former Senator Ted Kennedy**. **Senator-elect Brown** said in his victory speech that “people do not want a trillion dollar health plan...drive us deeper into debt” and result in government “taking over health care.” However, he said “it is important for everyone to get some kind of health care” and that “we can do better” by bringing it “back to the drawing board.” After Brown’s victory, **President Obama** said the Senate should not attempt to “jam” a reform bill through before **Scott Brown** is seated; an apparent necessity when Virginia **Senator Jim Webb** said that no health reform votes should take place until Brown is able to vote on such issues in the Senate. Lacking

60 votes to stop a Republican filibuster, retiring **Senator Chris Dodd** said Congress should take a “breather” on health reform, but **White House Press Secretary Robert Gibbs** said that health care reform continues to be a priority for the President and that “there are a lot of different paths forward” to completing health reform. After **House Speaker Nancy Pelosi** said the Senate-passed bill is dead in the House, the **House Majority Leader Steny Hoyer** said a scaled-back approach could be “a reasonable alternative.” An alternative being promoted by some House Democrats is for the House to pass several stand-alone bills, such as repealing the anti-trust exemption for health insurance companies, taking the “Patient Bill of Rights” off the shelf of prior congresses and including various insurance reforms and take up an alternative to bring down malpractice insurance costs. While the reconciliation route is still one that is available,

the passage of a new budget for FY 2011 would probably shut the door on this approach and kick the health-reform can beyond the fall elections, thus making this an undesirable avenue for reform this year. Congressional Democrats are likely to wait on further health reform efforts until they take direction from **President Obama** via his State of the Union address scheduled for January 27th. The extent of Republican support for any new bipartisan effort at health reform remains to be seen, even though **Senate Minority Leader Mitch McConnell** said “We’re prepared to meet them in the middle...” Also, **House Minority Leader John Boehner** said Republicans are willing to work with Democrats on a vastly scaled-back reform bill that primarily targets high health care costs, that abandons the current legislation and excludes individual mandates to buy health insurance coverage.

Health Reform Angst

House leadership is being pressed by nearly fifty healthcare experts and other political groups to pass the Senate health reform bill and “clean it up” via reconciliation or other means. In a letter from **MIT Econ Professor Jonathan Gruber** and **Harvard’s David Cutler**, a number of experts said that “abandoning health care reform -- the signature political issue of this administration -- would send a message that Democrats are incapable of governing and lead to massive losses in the 2010 election, possibly even in 2012...” In addition, MoveOn.org, Health Care for America Now and Families USA also favor having the House pass the

Senate bill and deal with the consequences later. On the other side of the spectrum, a coalition of 194 mainly small business organizations, StartOver!, oppose the two bills and in particular the White House agreement that would exclude plans subject to collective bargaining agreements from the excise tax on “Cadillac” health plans until 2018. This White House agreement relating to collectively bargained plans was also expanded to include the federal employees FEHBP health plan, according to **House Minority Leader Steny Hoyer**.

MedPAC on In-Office Ancillary Care/Home Health Payments

The Commission recently addressed the exception to the Stark self-referral law which allows physicians to provide most in their office most of the services that are subject to the rule. MedPAC said that in-office ancillary services, particularly lab tests and physical and radiation therapy, are growing at a rapid rate and that the increased utilization may require narrowing the exception for such services. Three options for controlling the escalation of in-office ancillary services was discussed, as follows: excluding outpatient and radiation therapy

from the in-office exception, creating new payment tools to reduce the incentive for using such services and establishing a prior-authorization system for physicians who are self-referring for advanced imaging. MedPAC's next meeting is scheduled for March 4-5 and any recommendations the commission decides to make on this issue would be sent to Congress in its March or June reports. In addition, MedPAC will recommend in its March report that home health agencies not receive a payment update for FY 2011, but said HHS should rebase home health base payments to better reflect the cost

of providing care. Commissioners also recommended that HHS modify the home health PPS to create a financial safeguard that would protect home health beneficiaries from provider stinting or giving a lower quality of care in response to the payment rebasing. In another recommendation, MedPAC suggested that HHS identify the groups of beneficiaries most likely to benefit from home health care and develop outcomes measures for quality of care.

Recently Introduced Health Legislation

H.R. 4465 (VETERAN'S HEALTH), to amend Title 38, United States Code, to direct the secretary of veterans affairs to take into account each child a veteran has when determining the veteran's financial status when receiving hospital care or medical services; KISSELL; to the Committee on Veterans' Affairs, Jan. 19.

H.R. 4473 (MEDICARE), to amend Title XVIII of the Social Security Act to establish an extended special enrollment period for individuals to enroll in Part B of Medicare; SCHRADER; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 20.

S. 2942 (NANOTECHNOLOGY), to amend the Federal Food, Drug, and Cosmetic Act to establish a nanotechnology program; PRYOR;

to the Committee on Health, Education, Labor, and Pensions, Jan. 21.

H.R. 4492 (FIRST RESPONDERS), to amend the Homeland Security Act of 2002 to ensure continuation of the Metropolitan Medical Response System Program, and for other purposes; BILIRAKIS; jointly, to the committees on Energy and Commerce and Homeland Security, Jan. 21.

H.R. 4500 (APPROPRIATIONS), to rescind unobligated appropriations and repeal certain health care-related provisions in the American Recovery and Reinvestment Act of 2009 for purposes of reducing the national debt; McCOTTER; jointly, to the committees on Appropriations, Energy and Commerce and Science

and Technology, Jan. 21.

H. RES. 1033 (DISEASE AWARENESS), expressing support for designation of April 2010 as "National Autism Awareness Month" and supporting efforts to devote new resources to research into the causes and treatment of autism and to improve training and support for individuals with autism and those who care for individuals with autism; REICHER; jointly, to the committees on Energy and Commerce and Education and Labor, Jan. 21.