



House Schedules and Passes Health Reform on 220-215 Vote

President Twists Arms for House Vote

President Obama met with House members last Saturday to help obtain the 218 votes necessary for passage of H.R. 3962 that Speaker Pelosi scheduled for debate that day. **OMB Director Peter Orszag** also said that the Administration is concerned about a projected 10-year federal deficit of \$9 trillion and will push for savings through health care reform, paying for other proposed programs and a “a range of options” being considered for inclusion in the FY 2011 federal budget. In addition, **HHS Secretary Kathleen Sebelius** defended the cost of health care reform legislation against the higher cost of the status quo while addressing small business owners and urging them to take their case to Congress.

House Passes Health Reform with Only 2 Votes to Spare

The House took up debate on H.R. 3962 last Saturday even as House Democrat leaders raced to find the 218 votes needed for passage. Some reluctant Democrat members were buoyed by the endorsement of H.R. 3962 by AARP and the conditional support of the AMA which said the reform bill must be accompanied by passage of H.R. 3961 which offers a permanent fix for the sustainable growth rate formula (see below for information on H.R. 3961). Republicans, however, maintained their unanimous opposition to the bill, arguing that, inter alia, its mandates and penalties will kill jobs, make criminals of individuals violating

individual mandates, and create budget busting costs. The CBO initially said the bill’s provisions to increase insurance coverage would cost about \$1.055 trillion over 10 years, although the net costs of the provisions, taking into account insurance-related penalties expected from individuals and businesses, would amount to about \$894 billion.

CBO also said the Republican substitute has a gross cost of \$61 billion over 10 years for the coverage provisions in the bill; a net cost of \$8 billion; result in a net reduction of \$68 billion in the federal deficit from 2010 to 2019; and in 2019 reduce the number of uninsured by 3 million compared with current law. The substitute amendment would, inter alia, seek to expand coverage through the use of state high-risk pools and reinsurance programs, some insurance market reforms, payments to states for controlling premium costs and small business association health plans; it would also institute certain medical liability reforms. The Republican

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substitute failed on a party-line vote.

A so-called manager's amendment included in the bill under the rule would provide \$1 billion in grants to states to monitor and report insurer premium increases, including recommending insurers for exclusion from the insurance exchange based on a pattern of excessive or unjustified premium increases; would create an exemption to the ban on self-referral for physician-owned hospitals if they have a higher proportion of Medicaid patients compared with other area hospitals; would require applicants to the high-risk pools created by the bill to prove they are citizens or lawfully residing in the United States; and would move the Office of Minority Health from within the HHS Office of Public Health and Science to the Office of the Secretary and establish additional offices in other HHS departments.

Last minute sticking points for a number of Democrat members included: efforts (that failed) to strike the bill's provisions allowing undocumented immigrants from purchasing coverage through the health insurance exchange (the bill does not require verification of citizenship or residency to purchase insurance through the exchange, though undocumented immigrants would be ineligible to receive premium subsidies); and a bipartisan amendment by **Reps. Bart Stupak and Joe Pitts** that would codify the so-called Hyde Amendment in H.R. 3962, prohibit federal funds for abortion services in the public

option, prohibit individuals who receive affordability credits from purchasing a plan that provides elective abortions, allow individuals (both who receive affordability credits and who do not) to separately purchase with their own funds plans that cover elective abortions, and clarify that private plans may still offer elective abortions. A provision by **Rep. Brad Ellsworth**, in an attempt to compromise the issue, was included in the bill upon adoption of the rule; the provision would provide that private contractors be hired to handle all funds related to abortion coverage under a public health insurance plan. In addition to the Ellsworth provision, the underlying bill would require federal subsidies to be segregated from individuals' premium contributions to control whether federal funds pay for abortions, a provision pro-choice Democrats say preserves the status quo regarding abortion funding. Although the Stupak amendment was adopted on a vote of 240-194-1, House Democrats rallied their pro-choice members to pass the legislation on a 220-215 vote. The House bill as passed, with the Stupak amendment, will likely put pressure on the Senate majority to adopt a provision similar to the Stupak amendment.

Medicare Physician Payment Reform Legislation

Although the House health reform bill was stripped of the initial provision that would have reformed the Medicare physician payment system in order to keep the cost of the legislation below

the \$900 billion target set by **President Obama, Rep. Dingell** introduced separate legislation, the Medicare Physician Payment Reform Act of 2009 (H.R. 3961) that would replace the SGR and increase physician reimbursements by 1.2% in 2010, canceling the scheduled 21% cut due at the beginning of next year. The bill would replace the SGR with a new formula that removes items such as drugs and laboratory services not paid directly to practitioners from spending targets; allow the volume of most services to grow at the rate of the gross domestic product plus 1 percentage point per year; and allow the volume of primary and preventive care services to grow at GDP plus 2 percent per year. CBO said the bill has a net cost of about \$209.6 billion over 10 years, which includes an increase in Part B premiums of \$49 billion. The provision stripped from health reform would have cost \$245 billion over 10 years while the revised estimate incorporates information provided in the final rule on physician payment issued Oct. 30 by CMS, including its decision to remove physician-administered drugs from the payment calculation.

House Majority Leader Steny Hoyer previously said this bill would not be acted on in the House unless it does not add to the budget deficit or it is enacted along with a legislative package reinstating a pay-as-you-go budget law. In accordance with his demand, the rule taken up for health reform also includes one-hour of debate and a separate

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vote on H.R. 3961 which would automatically attach the provisions of H.R. 2920 (legislation previously passed by the House which would reinstitute and update the Pay-As-You-Go requirement of budget neutrality on new tax and mandatory spending legislation, enforced by the threat of annual, automatic sequestration).

Senate Health Reform Activities

Perhaps with the GOP gubernatorial victories in New Jersey and Virginia in mind, last week **Senate Majority Leader Harry Reid** refused to be pinned down on the timing for passage of health reform in the Senate. He said “We’re not going to be bound by any timelines....We need to do the best job we can for the American people. We want quality legislation, and we’re going to do that.” **Senator Reid’s** office later clarified his remarks, issuing a statement in which he said: “Our goals remain unchanged.

We want to get health insurance reform done this year, and we have unprecedented momentum to achieve that.” He also indicated he would give Senators and the public sufficient time to review a final bill before it comes to the Senate floor. **Senator Olympia Snowe** concurred, stating that “I always felt it should be slowed down.... Too much of this is on the fast track....” **Senator Ben Nelson’s** view is instructive, when he said that the outcome of the November 3rd elections “might give some people pause, but I thought we ought to be careful about it for some time....” **Senator Reid** submitted legislation to CBO for their estimate of the bill’s cost, and their response is likely to come this week. Also, the specifics of the bill submitted by **Senator Reid** have yet to be released, suggesting that internal Senate Democrat negotiations continue over the substance of the bill to be taken to the floor with further CBO analysis of any compromise necessarily delaying floor action. As to the inclusion of the public option

with a state opt-out espoused by **Senator Reid, Senate Finance Chairman Max Baucus** said about the provision--“Locked in is a little strong, but probably.” **Senator Carper** stated “What is likely to come to the floor is some kind of national public plan with an opt-out for states....I don’t know if there are 60 votes to take that bill to the floor. I know that there are not 60 votes to take that bill off the floor.” At a hearing last week held by the Senate HELP Committee, witnesses focused on the major concern to small businesses, that is the rising cost of health insurance. However, economists who testified disagreed as to whether health care reform legislation currently before Congress would successfully control costs to employers and workers. **Ranking member Mike Enzi** said the health care legislation currently pending would “do nothing to address the problems of increasing costs and premiums for small businesses.”

House Approves Bill To Spur Domestic Production of Medical Isotope

Last week the House voted 400-17 to pass H.R. 3276, legislation that would allocate \$163 million for a new Energy Department program to promote domestic production of the medical isotope, molybdenum-99, used in diagnostic medical procedures. The isotope is used in about 26 million U.S. procedures annually to detect cancer,

heart disease and thyroid problems, investigate brain and kidney functioning, image stress fractures and track cancer progression. The bill would provide funding from FY 2011-2014 to evaluate and support production of the isotope in the U.S. without the use of highly enriched uranium.

FY 2010 LHHS Appropriations Remain Stalled

The schedule for the separate consideration of both the LHHS and Defense appropriations bills continues to remain unclear, although spending continues until December 18 under the CR put in place last week. In related news, **Reps. Jeb Hensarling and Paul Ryan** introduced H.R. 3964, the Spending, Deficit and Debt Control Act of 2009, that would make several changes to the budget process by requiring CBO and OMB to make 75-year projections

for the sustainability of the major entitlement programs, such as Social Security, Medicare, and Medicaid and allow for the use of reconciliation to enact long-term savings in such programs. The bill would also allow for automatic spending cuts, sequestration, to enforce budget limits; put in place a biennial appropriations process; institute a moratorium on earmarks pending a study on how to reform the process; and allow for expedited procedures to rescind previously authorized spending.

The bill would also set 10-year caps limiting annually appropriated spending to grow no faster than inflation, while also setting a 10-year cap on mandatory spending that would prohibit its growth unless offset with mandatory spending cuts elsewhere. The bill would limit annual deficits to no more than 2% of GDP and repeal a House procedural rule that allows the vote on the budget resolution to also stand as the vote on a spin-off bill to raise the federal debt ceiling.

Medicare 2010 MD Fee Schedule

CMS finalized the 2010 physician fee schedule that removes office-administered Part B drugs from the calculation of reimbursements and terminates payments for consultation services. The rule, slated to be published in the Nov. 25 Federal Register and effective Jan. 1, 2010, also finalizes a 21.2% reduction in the fee schedule due to the sustainable growth rate (SGR) formula. CMS said that comments are due by Dec. 29 on issues including the interim relative value units (RVUs) for selected codes, physician self-referral designated health services (DHS) codes, and services for consideration for the five-year review of work RVUs for certain services. This rule would be overridden if the provisions of H.R. 3961 are enacted (see above).

Call-out for SCHIP/Medicaid Eligibles

Last week **HHS Secretary Kathleen Sebelius** called on states and local communities to work with HHS to find and enroll the remaining 5 million children who, while eligible for Medicaid or SCHIP, are not yet covered. HHS has awarded to date \$40 million in grants to 69 organizations nationally to fund outreach projects in their communities with another \$90 million in grants being awarded over the next four years.

NIH Grants to Create Nationwide Networks for Biomed Researchers

The National Institutes of Health has awarded \$27 million in grants to lead new web-based initiatives to help facilitate biomedical research nationwide using social networking technology. The grant projects will use the technology for social networking sites to help researchers

“connect, collaborate, and share resources better and faster on scientific advances.” All software developed in this project will be available to biomedical institutions in the nonprofit sector at no cost. Funded by the ARRA stimulus incentives, the project, led by Harvard and involving eight other

institutions, will focus on creating a “home” where experts can share resources that is named “the Federated National Informatics Network” and which will allow any investigator across the country to discover research resources that are presently invisible.

S. 2662 (MEDICAL MALPRACTICE), to establish federal standards for the resolution of health care malpractice claims, and for other purposes; GRAHAM; to the Committee on the Judiciary, Nov. 2.

H.R. 3979 (TAX POLICY), to amend the Internal Revenue Code of 1986 to deny the deduction for advertising and promotional expenses for prescription pharmaceuticals; BERRY; to the Committee on Ways and Means, Nov. 2.

H.R. 3987 (MEDICARE), to amend titles XI and XVIII of the Social Security Act to promote the use of health information technology to better coordinate health care; BLUNT; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 3.

H.R. 4006 (VETERANS' HEALTH), to amend Title 38, United States Code, to provide for Indian veterans health care coordinators, and for other purposes; KIRKPATRICK of Arizona; to the Committee on Veterans' Affairs, Nov. 3.

H.R. 4007 (MEDICAL MALPRACTICE), to authorize the Secretary of Health and Human Services to make grants to 5 States to establish medical malpractice tribunal pilot programs, and for other purposes; LEE of New York; to the Committee on the Judiciary, Nov. 3.

S. 2730 (COBRA), to extend and enhance the COBRA subsidy program under the American

Recovery and Reinvestment Act of 2009; BROWN; to the Committee on Health, Education, Labor, and Pensions, Nov. 4.

H.R. 4018 (HEALTH INSURANCE), to amend the Public Health Service Act to provide additional health insurance options for unemployed individuals; DEAL of Georgia; to the Committee on Energy and Commerce, Nov. 4.

H.R. 4019 (HEALTH INSURANCE), to amend the Public Health Service Act to limit preexisting condition exclusions in the individual health insurance market to those permitted in the group health insurance market; DEAL of Georgia; to the Committee on Energy and Commerce, Nov. 4.

H.R. 4020 (HEALTH INSURANCE), to enable states to establish reinsurance programs or high risk pools to ensure that high risk individuals are able to access health insurance; BURGESS; to the Committee on Energy and Commerce, Nov. 4.

H.R. 4024 (NATIVE HAWAIIANS), to amend the Native Hawaiian Health Care Improvement Act to revise and extend that act; HIRONO; to the Committee on Energy and Commerce, Nov. 4.

H.R. 4026 (ILLEGAL ALIENS), to provide for the withholding of United States assistance to a foreign country in an amount equal to 110 percent of the total amount of costs incurred by United States hospitals and other medical

facilities for the long-term care of aliens unlawfully present in the United States from that country during the preceding fiscal year, and for other purposes; SPACE; jointly, to the committees on Foreign Affairs and Homeland Security, Nov. 4.

S. 2734 (DIABETES), to amend the Public Health Service Act with respect to the prevention of diabetes, and for other purposes; FRANKEN; to the Committee on Health, Education, Labor, and Pensions, Nov. 5.

S. 2741 (MEDICARE), to establish telehealth pilot projects, expand access to stroke telehealth services under Medicare, improve access to "store-and-forward" telehealth services in facilities of the Indian Health Service and federally qualified health centers, reimburse facilities of the Indian Health Service as originating sites, establish regulations to consider credentialing and privileging standards for originating sites with respect to receiving telehealth services, and for other purposes; UDALL of New Mexico; to the Committee on Finance, Nov. 5.