HOUSE REVEALS PROPOSAL – SENATE MAY DELAY

The Democratic leadership in the House of Representatives has revealed a revised health care reform proposal and is working on some final adjustments that may put it on track for a vote as early as the coming week. The bill, which has an estimated ten-year price tag of at least $1.2 trillion and takes up almost 2,000 pages, reflects the work of the three House Committees' earlier bills and offers a watered down version of the public plan option included in the earlier proposals.

Senate Democrats are working to reconcile the two Committee bills passed in their chamber. They are wrestling with the issue of providing a public plan option and have recently indicated that a Senate reform bill may not be passed before the end of the year. This possible delay is a reflection of the challenge the Senate faces to find enough common ground on the public plan option that will garner the 60 votes needed to avoid a Republican filibuster.

As the Democrats work to move forward on health care reform, Republicans in the House have issued a set of proposals for improving health care that are far more limited than the Democratic proposals. All of these developments are now set against the backdrop of the recent election results, which may affect the thinking and positions of some moderate and freshman legislators who represent traditionally conservative constituencies. This bulletin summarizes key features of the House bill proposed by the Democrats, and provides insight into the Senate's progress and the impact the recent election results may have on the health care reform debate.

THE HOUSE PROPOSAL

The *Affordable Health Care for America Act* is a product of the Democratic caucus, receiving no Republican support. Interestingly, the bill is touted as a "moderate" solution, particularly as it relates to the public plan option (discussed below).

Some key features of the bill include the following:

Proposed Immediate Reforms for 2010

- Reduce current pre-existing condition exclusions to a 30-day look-back period and 3-month exclusionary period.
- Prohibit lifetime maximums.
- Allow individuals on COBRA to continue COBRA coverage until the new National Health Exchange is available in 2013.
- Provide participants in a group health plan the option of continuing coverage for an adult child to age 27.
- Wellness program grants for small businesses.
- Tax favored treatment for all individuals eligible for group health plan coverage, not just tax dependents of the employee (affecting same-sex spouses, domestic partners and adult children).

Exchanges

- Establish a national market place by 2013 for individuals and small businesses (25 or fewer employees) to purchase health insurance, including a public plan option.
- Open the exchange to larger employers in 2015 (under 50 employees) and 2017 (100 or fewer employees).
- Allow states to create state-based exchanges as opposed to participating in the national exchange.

Employer "Pay or Play"

- Effective 2013, employers will be required to offer coverage to employees and make minimum contributions or pay a penalty equal to 8% of payroll.
    - Contribution Requirement: To avoid a penalty, employers will need to contribute 72.5% of the premium for individual coverage and 65% of the premium for family coverage.
- The penalty is phased out for payrolls less than $750,000 and no penalty will apply for a payroll under $500,000.
- Small business tax credits will be available for employers with 25 or fewer employees and average wages of $40,000.

Individual Responsibility

- Effective 2013, all Americans will be required to have acceptable health insurance coverage or pay a penalty of 2.5% of their income (capped at the average national cost of qualified coverage).

Access and Affordability

- Expands Medicaid to cover individuals with income at or below 150% of the Federal Poverty Level (the current Federal Poverty Level for 2009 is set at $10,830 for a single individual and $22,050 for a family of four).
- Provides financial assistance for premiums and cost sharing to those with income up to 400% of the Federal Poverty Level.

Public Plan Option

The bill includes a public plan option that allows providers to negotiate rates with the Secretary of Health and Human Services. As originally conceived in the House, providers would have had their rates set under Medicare. The negotiated rate feature is, apparently, a compromise to garner the support of more moderate members of the Democratic caucus.

Financing Reform

To pay for reform, the House proposes a tax of 5.4% on Americans with an adjusted gross income of $500,000 for single filers, $1 million for joint filers. The House also adopted provisions of the Senate Finance Committee bill including a $2,500 cap on Health FSAs, increasing the penalty for non-qualified distributions from the HSA, and prohibiting over-the-counter drugs from reimbursement under the FSA, HSA or HRA unless prescribed by a doctor.

The bill also enacts significant Medicare reforms, which some observers think may result in benefit cuts. It also contains a heightened focus on insurance industry practices, and proposes removing the industry's anti-trust exemption. Discussions continue on how to address spending on abortion and access by illegal immigrants, two politically charged issues for those on all sides of the political debate.

WHAT'S GOING ON IN THE SENATE?

Majority Leader Harry Reid is working with members of the Finance and HELP Committees to reconcile the two committee bills and produce a final reform package for the full Senate's consideration. While the Finance Committee bill has generally been viewed as the blue-print for a final reform package, there has been much discussion behind closed doors over the lack of a public plan option. Senator Reid, indicating that a public option would have to be included in the final version of the bill, floated the idea of a public plan option with a State opt-out provision. This has generated significant concern from Republican Senators as well as some moderate Democrats and it is unclear whether there are enough votes in the Senate to avoid a Republican filibuster. It is interesting to note that Senator Snowe (R-ME), who voted with the Democrats on the Finance Committee to release its bill, has publicly opposed the "opt-out" public plan option currently being discussed. She has long favored and proposed a "trigger" option, which would implement a public plan only if and where the exchanges failed to accomplish their objectives.

With Senator Reid's statement that the Senate's work may not be completed this year, it is reasonable to assume that discussions surrounding a possible public plan option in the Senate are still ongoing.

ELECTION RESULTS

It is not clear what the impact of the recent election results will be on the thinking of Congress as it considers the various health care reform proposals. There is much discussion and spin from all sides on this issue. One thing we can expect is that elected officials who benefitted from the results of the Presidential election in areas that are traditionally more moderate or conservative will certainly be keenly aware of the potential impact their votes on health care reform may have on their future electability. It is likely these concerns are a component of the ongoing discussions in Congress.

WHAT'S NEXT?

We expect that the House will work towards bringing a bill to the floor for debate and vote in the very near future, but with some further compromises to reflect the concerns of the more moderate members of the Democratic Caucus. These changes could likely occur in the areas of abortion spending and access by illegal immigrants. The Senate outcome is more difficult to predict. There will continue to be a power struggle over the public plan option and, unless some common ground such as the "trigger" option can gain traction, the Senate may be stalemated.

As the debate rages on, we will continue to monitor developments and provide you with timely updates.

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