



# Bryan Cave Health Reform Update

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Issue 11

## **White House**

### **White House Brokers Deal with Hospitals**

The nation's hospitals reached an agreement with the Obama Administration and the Senate Finance Committee July 8 to reduce their Medicare and Medicaid reimbursements by \$155 billion over 10 years to help fund health care reform legislation. The deal with the hospitals includes \$103 billion from reducing annual Medicare marketbasket updates. The agreement also includes about \$50 billion in reductions in Medicare and Medicaid disproportionate share hospital payments, which are used in part to reimburse hospitals to help pay for treating the uninsured.

Click [here](#) for details on the agreement.

### **OMB Director Weighs In on House Bill**

In a July 8 letter to the chairmen of the House Ways and Means, Energy & Commerce, and Education and Labor Committees, Office of Management and Budget Director Peter Orszag urged House Democrats to consider adding more Medicare and Medicaid provisions to their final health care reform bill, saying the current draft legislation would not do enough to transform the system. Orszag said passing a budget-neutral health care reform bill "is not enough, because it would perpetuate a system in which best practices are far from universal and costs are too high." Orszag lauded the delivery system reforms contained in the House draft bill, which he

called "game changers" but added "it would be desirable to build upon these measures with additional steps that will help make our health care system sustainable for years to come."

### **President Signals Optimism on Health Reform Timeframe**

Speaking to reporters from the G-8 summit in Italy on July 10, President Obama reiterated his desire for the House and Senate to pass health reform legislation before lawmakers adjourn for the summer. However, Obama acknowledged the difficulties Congressional leaders are experiencing in finding money to pay for reform measures and in negotiating other outstanding issues. These delays are threatening to push Congressional action into the fall. "I never believe anything is do-or-die," Obama said. "But I really want to get it done by the August recess." Obama said health reform should be paid for "and that creates some difficulties because people would like to get the good stuff without paying for it. And so there are going to be some tough negotiations in the days and weeks to come, but I'm confident that we're going to get it done," he said.

## **Congress**

### **HELP Markup To Conclude This Week?**

The Senate Health, Education, Labor and Pensions (HELP) Committee continued its markup of health reform legislation after returning from the July 4<sup>th</sup> recess. The panel debated new language on the public

plan and an employer mandate. Republican efforts to limit subsidies to those with incomes below 250 percent of poverty and eliminate the public plan option were thwarted by Democrats. Although numerous amendments remain to be debated, the panel hopes to conclude the markup the week of July 13. Democrats had planned to wrap up the markup last week, but progress was delayed because of the death of acting Chairman Chris Dodd's (D-CT) sister.

Details of the markup can be found [here](#).

### **Follow-on Biologics Issue Debated In Markups**

The HELP Committee markup was also stalled because of disagreement over how to create a pathway for the approval of "follow-on" biologic drugs as part of the panel's health reform bill. The committee is divided on the question of how long brand name companies would maintain data exclusivity. While a bipartisan agreement was reached by the committee in 2007, some HELP Democrats say the deal is outdated. Chairman Edward Kennedy (D-MA) unveiled updated legislation July 7 that would not award exclusivity to innovator biologics approved by the FDA prior to the health reform bill's enactment. The bill would give innovators nine years of exclusivity, with the option of three more years for making significant therapeutic advances to biologics, followed by another year for an additional improvement. However, several conditions must be present before a biologic would be eligible for additional exclusivity periods. The new bill backs off the 2007 deal that guaranteed 12 years without competition from biosimilars but did not include additional time for improvements or new indications.

The House Energy & Commerce Committee will consider the follow-on biologic issue during its markup the week of July 13. Rep. Anna Eshoo (D-CA) said July 10 she plans to offer her bill (H.R. 1548) on follow-on biologics as an amendment to the health reform legislation. Her bill, which has bipartisan support, would provide innovators with 12 years of exclusivity, which can be extended by two more years if a new indication is approved.

Details on Eshoo's bill can be found [here](#).

### **Finance Progress Slowed by Cost Issue**

On July 8, Senate Finance Committee Chairman Max Baucus (D-MT) said his panel must find \$320 billion in new revenue or savings to help pay for health reform but added that no decisions have been made about where the money will come from. This hole opened when Senate Majority Leader Reid and other Democrats expressed opposition to taxing employer-provided health benefits. Polling results released by Sen. Kent Conrad (D-ND) on July 7 indicated that about 70 percent of Americans oppose taxing health benefits. Conrad, a key member of the Finance Committee, said the panel is "searching for options" that go beyond the health care sector and are different from what the committee has previously said it is exploring. The committee, which is responsible for producing the offsets to pay for health reform, was originally scheduled to consider its bill the week of July 13, but it now appears that a markup may not occur until the week of July 27.

### **House Blue Dogs Raise Objections to Reform Bill**

House Democrats were scheduled to formally introduce revised health reform legislative language on July 9, but a split within the Democratic caucus over the content and cost of the current version of the reform bill has delayed introduction to July 13 at the earliest. Forty members of the fiscally conservative House Blue Dog Coalition sent a letter to Speaker Nancy Pelosi (D-CA) and Majority Leader Steny Hoyer (D-MD) on July 9, saying they had "strong reservations" about the bill and that they could not "support a final product" that did not address those concerns. They said the bill "must start with finding savings within the current delivery system and maximizing the value of our health care dollar before we pay more." As a result, the Energy & Commerce Committee markup, which was scheduled to begin July 13, has been postponed.

Click [here](#) to read the letter.

## **CBO Scores House Bill's Medicare Savings**

The Congressional Budget Office (CBO) released a preliminary estimate of the Medicare portion of the House health reform draft bill on July 8, claiming the proposal would yield \$152 billion in Medicare savings over 10 years. CBO estimated that the Medicare cuts would total \$500 billion, but the draft calls for cost-increasing investments that would fix the physician payment system, close the Medicare prescription drug coverage gap, encourage prevention and wellness by eliminating cost-sharing for preventive services, and improve access for low-income beneficiaries.

Read the CBO analysis [here](#).

## **Committee Floats Plan to Pay for Health Reform**

On July 10, members of the House Ways and Means Committee unveiled a plan to pay for health reform legislation that would combine \$500 billion in Medicare savings and a new income surtax on wealthy individuals that would produce \$540 billion over ten years. Chairman Charles Rangel (D-NY) said the surtax would be levied beginning in 2011 and the rate would be graduated. The income levels that would trigger a surtax are expected to be: \$350,000, \$500,000 and \$1 million for couples filing jointly, and \$280,000, \$400,000 and \$800,000 for individuals. A different rate would be levied at each level, likely beginning at one percent for the first level and increasing to three percent for the highest level. Specific details are expected when the House introduces its revised health reform bill. The committee has rejected a number of other proposals to pay for the measure, including a tax on sugared beverages or applying Medicare's payroll tax to capital gains.

## **Panel Examines Solutions to Provider Shortages**

At a July 8 hearing before the House Small Business Committee, witnesses discussed the national physician shortages in both primary and surgical care and ways to address the problem in anticipated health reform legislation. Committee Chair Nydia Velazquez

(D-NY) noted that while health reform would bring coverage to more Americans, it would not create more doctors to treat them.

Hearing details can be found [here](#).

## ***Appropriations Developments***

### **House Labor-HHS-Education Appropriations Subcommittee Marks Up FY 2010 Bill**

The House Labor-HHS-Education Subcommittee approved its FY 2010 appropriations bill on July 10. The bill includes \$30.966 billion for the National Institutes of Health. This represents a \$941.764 million increase over FY 2009 and a \$500 million increase over President Obama's request. Chairman David Obey (D-WI) stated that the subcommittee had "rejected the Administration's targeted funding approach" ensuring that "all institutes and centers receive funding to offset biomedical research inflation."

Read Obey's statement and the summary table [here](#).

## ***Hearings This Week***

The **Senate Health, Education, Labor and Pensions Committee** will continue its markup of health reform legislation on July 13 at 2 p.m. in 325 Russell Senate Office Building.

The **House Ways and Means Committee, Energy & Commerce Committee**, and the **Education and Labor Committee** plan to markup the House health reform bill the week of July 13.