



Bryan Cave Health Reform Update

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White House

President's Speech Jump Starts Congressional Health Reform Effort

On September 10, President Barack Obama addressed a joint session of Congress in order to reframe and jump start the health reform debate. In his speech, Obama raised the key provisions he wants in a final reform package. He said the reform plan should provide coverage for the uninsured, provide additional protections for those currently with insurance coverage, and slow the growth rate of health care costs. The President said he would not sign a bill that adds to the federal deficit, adding that much of reform could be paid for by eliminating fraud and abuse in the Medicare and Medicaid programs and increasing the efficiency of health care. Obama also said he supports including a public health plan option in reform legislation, claiming it would "keep insurance companies honest." However, the President did not insist on its inclusion in reform legislation. While acknowledging the disagreement over how to best reform the health care system, he called on Congress to act quickly to help Americans obtain affordable health care. "The time for games has passed," Obama said. "Now is the season for action. Now is when we must bring the best ideas of both parties together and show the American people that we can still do what we were sent here to do. Now is the time to deliver on health care."

Review the President's speech [here](#).

Obama Open to Medical Liability Reform

In his speech to Congress, President Obama called for reforms to be made regarding medical liability, saying he was ordering the Department of Health and Human Services to launch state-level demonstration projects to test alternatives to using the judicial system to resolve malpractice suits. In a nod to the position of many Republicans and provider groups, Obama said states would be eligible for grants to institute medical malpractice reforms aimed at reducing lawsuits and improving patient safety. "I don't believe malpractice reform is a silver bullet, but I have talked to enough doctors to know that defensive medicine may be contributing to unnecessary costs," Obama said. An HHS spokesman said examples that could be included in the demonstration projects include certificate of merit programs that require individuals to obtain expert affidavits regarding the validity of their case or early disclosure models that encourage doctors to disclose errors and apologize for them. In response to the President's speech, the American Association for Justice, an association of trial lawyers, said malpractice reform must focus on reducing errors and improving patient safety and noted that health reform is not the best place to address malpractice reforms. However, the American Medical Association, which has long advocated for malpractice reforms, welcomed the President's comments. "Recognizing the critical need for medical liability reform is an important step toward reducing unnecessary costs. Every day physicians across the country are forced to consider the broken medical liability system when making decisions, resulting in defensive medicine that adds to unnecessary health costs. We cannot

ignore this problem if health-system reform is going to address the growing cost of care,” AMA President James Rohack said.

Congress

Baucus Unveils Health Reform Framework Proposal

Over the Labor Day weekend, Senate Finance Committee Chairman Max Baucus (D-MT) released a proposal for comprehensive health reform. The proposal, which Baucus estimated would cost about \$900 billion over 10 years, calls for establishing a health insurance exchange, reforming the private insurance market by requiring health plans to offer coverage on a guaranteed issue basis, creating health insurance cooperatives to compete against private health plans, taxing high-value insurance policies, and encouraging the development of prevention and wellness programs. The “framework” document did not include a proposal to establish a government-run public insurance option, as Baucus said he does not believe such a proposal could pass the Senate. Instead, the framework would authorize funding for the Consumer Operated and Oriented Plan (CO-OP) program to create non-profit, member-run health insurance companies to compete with private plans. The 18-page proposal, which was circulated to the bipartisan “Gang of Six” Finance Committee negotiators, would require individuals to obtain health coverage by 2013 but would not require employers to offer health coverage to employees. Instead, businesses with more than 50 full-time employees that do not offer health coverage would have to pay a fee for each employee who receives the tax credit for health insurance through an exchange. The legislation also would expand Medicaid eligibility to cover those with incomes up to 133 percent of the federal poverty level, replace the scheduled 21 percent cut in Medicare physician payment rates in 2010 with a 0.5 percent increase, and create a non-profit institute to conduct comparative effectiveness research.

To help pay for health reform, Baucus’ proposal would impose an excise tax of 35 percent on

insurance companies offering high-value policies, reduce Medicare and Medicaid spending by about \$500 billion over 10 years, and levy approximately \$130 billion in fees on various segments of the health care sector based on market share. The Gang of Six continues to meet to discuss a compromise, and Baucus said he still believes a bipartisan agreement on reform is possible. However, he added that the committee must move ahead with legislation and would do so without Republican support, if necessary. Baucus announced his plan to release a formal reform proposal the week of September 14, which would then be considered by the Committee in a markup the week of September 21. The bill could go to the Senate floor as early as the week of September 28.

The Baucus proposal is available [here](#).

As Senate Finance Committee negotiators prepare to unveil proposed legislation this week, the status of certain several provisions are being debated.

- The employer responsibility requirement to be included in the forthcoming package is expected to be weaker than the provision included in the bill approved by the Senate Health, Education, Labor, and Pensions Committee. The Baucus proposal would require employers with more than 50 full-time employees to provide health coverage or pay an assessment which would be capped at an amount equal to \$400 multiplied by the total number of employees at the firm. However, the HELP bill would require employers with more than 25 employees to provide coverage and pay at least 60 percent of the premium or face a penalty of \$750 per uncovered employee.
- In response to concerns that illegal immigrants could obtain federal assistance to obtain health coverage, Sen. Kent Conrad (D-ND) said the Gang of Six is crafting language that would require all individuals seeking subsidies to have Social Security numbers. Conrad said lawmakers “believe we’ve got very strong policy to ensure that people who are here illegally do not benefit from any” provisions in the legislation.

- Negotiators are also expected to drop from consideration a controversial five percent minimum charity care requirement opposed by non-profit hospitals. The Baucus proposal referenced new requirements for hospitals, including having them meet “a community needs assessment” to maintain a tax exempt status.

House May Let Senate Go First on Reform Bill

House Democratic leaders may allow the Senate to consider its health reform legislation first if the Finance Committee can produce and move a bipartisan package in the near future. Speaker Nancy Pelosi (D-CA) held a closed-door caucus meeting with House Members to try to undo the political damage to reform efforts from the August recess and convince her progressive and moderate colleagues to support the House legislation. House leaders will give the Energy & Commerce Committee time to complete its consideration of approximately 60 health reform amendments to the House bill (H.R. 3200) before allowing the Rules Committee to produce a final bill for floor action. The Energy & Commerce Committee is expected to resume its markup the week of September 14.

Pelosi Softens Stance on Government Run Plan

On September 8, House Speaker Nancy Pelosi (D-CA) called a government-run insurance option “essential” to passing a health reform bill in the House. Following a meeting with President Obama and Senate Majority Leader Harry Reid (D-NV), Pelosi said a public option is the best way to promote choice and competition in the insurance market while bringing down costs. “As far as our House members are concerned, the overwhelming majority of them support a public option,” Pelosi said. However, Pelosi and Democratic leaders have softened their language in recent days as the focus has turned toward a compromise on the issue. “This is about a goal. It’s not about provisions,” Pelosi said September 10, adding that so long as legislation meets goals of “affordability and accessibility and quality ... then we will go forward with that bill.” Rep. Mike Ross (D-

AR), the leader of the Blue Dog Coalition’s health reform efforts who advocated for negotiated rates in the Energy & Commerce Committee’s version of a public plan, has since come out against the public plan altogether. “A government-run public option is the wrong direction for health reform in this country and I will oppose it in the U.S. Congress,” he said in a recent e-mailed constituent newsletter.

Industry

Analysis: Long-Term Costs of Health Reform Significant

According to a September 9 analysis sponsored by the Peter G. Peterson Foundation, the version of the House health reform bill (H.R. 3200) as approved by the Energy & Commerce Committee would add more than \$1 trillion to the federal deficit in its second decade. The study, conducted by the Lewin Group, said the weaker public option in the final Energy & Commerce proposal made that bill more costly than the original bill, in which the public plan was based on Medicare reimbursement rates. The report’s findings may provide rhetorical ammunition for health reform opponents worried about its costs, but also for House liberals who support a “robust” federal health insurance option as a way to drive down spending. David Walker, president of the Peterson Foundation, said the findings underscore the need to ensure health reform does not add to an already grim long-term budget picture. “Washington is wanting to do what it always does, give people dessert and stave off eating the spinach to down the road,” he said.

A summary of the report is available [here](#).

Upcoming Congressional Action

The Senate Finance Committee plans to markup reform legislation the week of September 21.

The House Energy & Commerce Committee may resume its markup of reform legislation the week of September 14.