



Bryan Cave Health Reform Update

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White House

President Obama Presses Reform Agenda on Sunday Talk Shows

President Obama appeared on five Sunday morning talk shows to advocate for health reform. The President defended the reform effort, saying that it is not a “radical” proposal and would not “graft a single-payer model onto the United States.” Instead, he said the plan would reform the health insurance system to make it more affordable. For example, he said he supports taxing so-called “Cadillac” health plans as a way of reducing costs for everyone. The President warned that if nothing is done on health reform this year, “more people are going to lose health care coverage.” The President also defended an individual mandate to obtain health coverage, disputing criticism that it is a tax increase. “Right now everybody in America, just about, has to get auto insurance. Nobody considers that a tax increase,” the President said. Obama also sought to tie his reform effort to those of past presidents who sought major societal changes, such as President Franklin D. Roosevelt’s effort to enact Social Security and President Lyndon B. Johnson’s push to pass Medicare. “I think that the fact that this has become such a heated debate is a sign that we’re really trying to change the system. That we’re not just tinkering around the edges,” the President said.

The latest information on the President’s health reform activities is chronicled [here](#).

Congress

Senate Finance Committee Prepares for Health Reform Markup

Senate Finance Committee Chairman Max Baucus (D-MT) unveiled the elements of health reform legislation that his committee will begin marking up on September 22. However, Baucus unveiled his proposal without the bipartisan support he has been seeking the past several months. Although Baucus believes his reform approach could gain support from both parties, the proposal received a chilly reception from both committee Republicans and Democrats. Republican Senators Charles Grassley (R-IA), Mike Enzi (R-WY) and Olympia Snowe (R-ME), all of whom had been among the “Gang of Six” negotiators, have said they cannot support the bill in its current form but would be willing to continue talks. Democratic Senators Jay Rockefeller (D-WV) and Maria Cantwell (D-WA) also have publicly questioned whether they can support the bill. Yet Baucus received some encouragement from a letter signed by four Senate moderates. “We are encouraged by his commitment to work with both Democrats and Republicans in the Finance Committee, and believe there is a responsibility for both sides of the aisle to work together to develop a bill that will earn strong support from the full Senate,” read the statement signed by Democrats Ben Nelson (NE) and Claire McCaskill (MO), Independent Joe Lieberman (CT), and Snowe. The Finance Committee’s markup of the reform bill is expected to take several days as 564 amendments

were filed for consideration. Floor action could begin as soon as the week of September 28.

The Baucus proposal, which is very similar to the “framework” document issued over the Labor Day weekend, would require individuals to obtain health insurance coverage, establish health insurance exchanges, reform the private insurance system, expand Medicaid to those earning up to 133 percent of the federal poverty level, and establish state-based cooperatives to compete with private health plans. The Baucus proposal does not include a government-run insurance option. The bill, which the Congressional Budget Office estimates will cost \$856 billion over 10 years, is completely offset through \$409.8 billion in Medicare and Medicaid spending reductions; a tax on insurers offering so-called “gold plated” insurance plans, which would raise \$215 billion; new fees on certain providers (including annual fees levied on health insurers, drugmakers, medical device manufacturers, and clinical laboratories); and other provisions. The proposal would provide coverage for 94 percent of Americans by 2019 and would cut the number of uninsured by 29 million. The bill 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 bill also would move Medicare Advantage payments from their current payment system to one based on competitive bids from insurers, which would reduce MA spending by \$123.5 billion. To avoid a scheduled reduction of 22 percent in Medicare physician payments in 2010, the proposed bill would replace the cut with a positive 0.5 percent update next year.

A summary of the Baucus proposal can be found [here](#).

House Members React to Finance Bill

Although House Democratic leaders welcomed the opportunity to move the health reform process forward, they expressed little enthusiasm for the

provisions of the Baucus reform package. Speaker Nancy Pelosi (D-CA) said that while the proposal contains important provisions such as insurance market reforms and consumer protections, the House bill (H.R. 3200) better addresses the issues of affordability and competition. Pelosi, and other Democratic leaders, continue to believe a public insurance option is the best way to lower costs and are insisting on its inclusion in the final House bill. “As this proposal evolves, we hope to see modifications that result in the Senate bill better reflecting the work of the House to make health care more affordable for all Americans and promote competition that is key to keeping costs lower,” she said.

The House Energy & Commerce Committee will resume its markup of health reform amendments on September 23. The panel will debate whether the more than 50 bipartisan amendments should be included in the reform bill that will be considered on the House floor. Despite not having the final group of amendments from the Energy & Commerce Committee, House leaders have been melding the three committee versions of H.R. 3200. It is unclear when House leaders will bring the bill to the floor. Speaker Pelosi said they will move the bill to the floor when it is ready and not base their decisions on Senate action. “I don’t know when the Senate will act, so I can’t say whether we’ll be before them,” she said at a September 17 press briefing.

Waxman Vows to Continue Data Exclusivity Fight

Speaking at the Generic Pharmaceutical Association’s annual policy conference on September 18, House Energy & Commerce Chairman Henry Waxman (D-CA) said he will continue to press for an approval pathway for generic biologics that allows a shorter period of data exclusivity than was passed by his committee in late July. Before adjourning for the August recess, the Energy & Commerce Committee approved health reform legislation (H.R. 3200) that included an amendment offered by Representative Anna Eshoo (D-CA) that would allow the approval of follow-on biologics, but only after makers have 12

years of data exclusivity. Waxman said that despite having “lost a battle, the war is not over.” The Chairman said the Biotechnology Industry Organization and the Pharmaceutical Research and Manufacturers of America “engineered the passage of an amendment that would make a mockery of generic competition.” The 12 years of data exclusivity and unlimited opportunity for evergreening in the Eshoo amendment “is everything a monopolist could hope for,” he added. Waxman said, “the legislative process is an organic one” and “there are a lot of opportunities to revisit this issue. The important thing is to keep that fight going.”

Industry

Industry Reaction to Baucus Proposal Mixed

Drug, device, and purchasing organizations have offered mixed reactions to the health reform proposal proposed September 16 by Senate Finance Committee Chairman Max Baucus (D-MT). The Premier healthcare alliance said it “strongly supports” many provisions of the plan, particularly the creation of voluntary Accountable Care Organizations (ACOs), a national pilot to test the effectiveness of bundled payments and investments in quality measure development. Generic drug companies, however, objected to proposed increases in the rebates industry would pay in the Medicaid program, while clinical laboratories said a proposed fee on their industry would be onerous. Device manufacturers objected to the “unfair and counterproductive \$40 billion tax on medical devices.” Stephen Ubl, president and CEO of the Advanced Medical Technology Association, said the device industry “is already making substantial contributions to the cost of health reform through billions of dollars in cuts to our major customers such as hospitals, clinical labs, durable medical equipment providers and imaging services that will be passed on to manufacturers.” In a September 21 letter to Baucus, the American Medical Association praised the proposed bill’s provisions that would reform the health insurance market, provide tax credit subsidies for low-income individuals to buy

coverage, and establish health insurance exchanges. However, the AMA expressed concerns that the proposal does not permanently repeal the formula responsible for calculating Medicare reimbursements to physicians, grants broad authority to the Independent Medicare Commission, and assesses physicians participating in the Medicare and Medicaid programs a proposed \$350 enrollment fee.

Upcoming Congressional Action

The Senate Finance Committee begins its markup of reform legislation on September 22.

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