



# Bryan Cave Health Reform Update

September 28, 2009

Issue 18

## White House

### Administration Health Report Bolsters Message

Responding to rumors and what the Administration contends is misleading information about health reform legislation, Vice President Joe Biden and HHS Secretary Kathleen Sebelius issued a White House report September 23 promoting comprehensive health reform. Speaking at a town hall meeting in Maryland, Biden and Sebelius told seniors that health reform legislation would dramatically reduce health care costs and improve service quality. “We will protect seniors—not burden them with out-of-pocket costs,” Biden said. “The bottom line is seniors will be better off under what we are proposing, and not a dollar from the Medicare trust fund will be used to pay for health insurance reform.” According to the report, health reform would extend the solvency of the Medicare trust fund to at least 2021, four years after it has been projected to run out, and reductions in so-called “over-payments” to Medicare Advantage plans would finance improvements in health care quality for seniors. The report also notes that the federal government would fund programs to fight Medicare fraud and abuse, which contributes to increases in beneficiaries’ monthly premiums. Reform efforts also would eliminate the coverage gap in the Medicare prescription drug benefit, the report said.

Download the full report [here](#). Watch the [video](#) of the town hall meeting.

## Congress

### Senate Panel Begins Markup of Reform Language

The Senate Finance Committee began marking up its version of health reform legislation on September 22, but the pace of considering the more than 560 amendments to Chairman Max Baucus’ (D-MT) proposed bill has been slow. In the first week of the markup, committee members spent their time considering amendments that would reform the health care delivery system and expand coverage. Many amendments dealt with the Medicare program. Republican Senators sought to portray the Chairman’s mark, which proposes to reduce federal Medicare spending, as harmful to current beneficiaries and offered amendments they said would prevent benefit cuts in health benefits. Committee Democrats disputed the charge, pointing out that the spending reductions are limited to Medicare Advantage and not fee-for-service Medicare. Republicans also appeared to respond to criticism voiced during the August Congressional recess that Members of Congress do not read legislation before they vote on it. Senator Jim Bunning (R-KY) offered an amendment that would require the Finance Committee to post on its website the legislative language of the bill and the final Congressional Budget Office (CBO) cost estimate of the bill for 72 hours before a final vote. Senator Olympia Snowe (R-ME), whose support Baucus wants for the bill, said at the markup that she wants complete scoring of the plan before voting on it. Democrats countered Bunning’s amendment by saying the “plain English” conceptual language is

already available and that such a requirement would cause an unacceptable delay in the committee's schedule. In questioning CBO Director Douglas Elmendorf about the timing of cost analyses produced for the committee, Baucus insisted that Elmendorf's agency provide accurate cost estimates for health reform amendments as quickly as possible. Elmendorf told the Chairman his staff would need two weeks to produce a formal cost estimate of the bill as amended during the markup. The panel will resume its markup on September 29 and will begin to consider controversial amendments dealing with the inclusion of a government-run insurance plan. Debate on those amendments was originally scheduled to take place last week, but Baucus postponed debate in order to work out how to consider the amendments expected to be offered by Senators Jay Rockefeller (D-WV) and Charles Schumer (D-NY).

A summary of the Baucus proposal can be found [here](#). Amendments to the mark are located [here](#).

### **House Panel Recommends Additional Amendments to Reform Bill**

The House Energy & Commerce Committee met September 23 to mark up several health reform amendments that had not been considered during the panel's initial markup of H.R. 3200 in July. The committee voted in favor of a number of amendments and then approved by a vote of 28-22 a motion to instruct the Rules Committee to add the new amendments to the health reform bill. Two moderate Blue Dog Democrats, Representatives Jim Matheson (D-UT) and Charlie Melancon (D-LA), joined all Republicans in voting against the motion. This supplemental package will not automatically be made part of the bill the committee approved in July due to House rules. "It's up to the Rules Committee. They can handle it in a lot of different ways," committee Chairman Henry Waxman (D-CA) said following the markup. At the opening of the markup, Waxman offered a substitute amendment that contained eight amendments agreed to by both parties. This amendment was approved by voice vote. Overall, the approved amendments would make technical or non-

controversial changes to the committee-approved version of H.R. 3200.

All of the amendments considered by the committee can be viewed [here](#).

### **House Bill Nearing Completion; Process Outlined**

House Democratic leaders announced late last week they are close to an agreement on a final version of health reform legislation and hope to produce the "blended" legislation this week. While the House Rules Committee has the job of combining the versions of the legislation approved by the Energy & Commerce Committee, the Ways and Means Committee, and the Education and Labor Committee, Democratic leaders have directed that process from behind the scenes. Blending the bills has been difficult as controversial issues such as the public plan option, abortion, regional disparities in care and the overall cost of the bill have emphasized factions within the Democratic caucus. For example, moderate and progressive Democrats continue to be split over whether provider reimbursement rates in the proposed government-run plan option should be tied to Medicare, which progressives say will save more money, or should be negotiated, which moderates favor. Democratic leaders have insisted the House bill will include a government-run plan option and will not include a trigger to activate it. Once the unified bill is finished, it will be sent to the Congressional Budget Office, which needs approximately 10 days to produce a cost estimate. While Democratic leaders have said there is no urgency to bring the bill to the House floor given the status of reform legislation in the Senate, Representative Frank Pallone (D-NJ) said he hopes the bill will be brought to the floor next month.

### **Reconciliation Deadline Questioned By Budget Leaders**

With the October 15 deadline to use the budget reconciliation process to force health reform through Congress quickly approaching, it seems increasingly unlikely that the procedure will be used by that date. Moreover, some are even questioning whether the

deadline is enforceable. Senate Budget Chairman Kent Conrad (D-ND) recently said his staff told him that the deadline is not really a deadline, and committee Ranking Member Judd Gregg (R-NH) has said the “the chairman can waive” it. Gregg added that the “practical” deadline for completing reconciliation is the end of the year. The fiscal 2010 budget resolution allows reconciliation to be used for student aid and health reform legislation but sets an October 15 deadline for Congressional committees with jurisdiction over those matters to submit reconciliation instructions to the House and Senate Budget committees. The committees are then charged with packaging the instructions into a bill. There is no language in the budget resolution that states the deadline can be waived, but history suggests otherwise. Since reconciliation was created as part of the 1974 Budget Act, such deadlines have occasionally been exceeded. For example, the Congressional Research Service points out that in 1987 the Senate extended a July 28 deadline for reconciliation instructions first to September 29 and then October 19.

## ***Industry***

### **State Legislatures View Medicaid Expansion as Federal Responsibility**

Any expansion of the Medicaid program should be paid for by the federal government, according to a letter from the National Conference of State Legislatures to Senate Finance Committee Chair Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA). The conference supports new Medicaid mandatory eligibility categories and services and increased provider reimbursement but is concerned that anything less than 100 percent of the cost paid for by the federal government will shift billions of dollars in costs to the states. The letter noted that “cost shifts and unfunded mandates are insidious at any time, but are especially so now because state legislatures are struggling daily with the most drastic budget shortfalls in several generations.”

The Finance Committee’s mark would increase the federal share of Medicaid funding to a maximum of 95 percent for an expansion of the program to all those with incomes less than 133 percent of the federal poverty level. In the House, the same eligibility expansion is included in H.R. 3200. As introduced in the House, the expansion would be fully funded by the federal government. However, the legislation has since been amended to require states to contribute 10 percent of the costs.

The letter is available [here](#).

### **Proposed Excise Tax on High-Value Health Plans Criticized by Insurance Industry**

A number of insurance industry groups have written to the Senate Finance Committee to oppose a proposed excise tax on high-value health insurance plans. The Chairman’s mark includes a 40 percent excise tax on plans one percentage point above the pace of the consumer price index. According to the ERISA Industry Committee (EIC), such a tax will be paid through reduced “wages, benefits, or the number of employees” on a payroll. In a second letter, the EIC and the American Benefits Council wrote that “the reality of this provision is that a tax on the value of health insurance plans over a certain value will ultimately be passed on to employees through decreased wages, decreased benefits, or increased employee premiums.” America’s Health Insurance Plans also criticized the proposal, writing in a letter to committee Chairman Max Baucus (D-MT) that the proposal would “cause many Americans to spend more on coverage.”

## ***Upcoming Congressional Action***

The Senate Finance Committee continues its markup of reform legislation on September 29.