



Bryan Cave Health Reform Update

October 5, 2009

Issue 19

White House

President Obama Renews Push for Health Reform

On October 5, President Obama said he is “confident we are going to get health reform passed this year.” In a short speech to Doctors for America, a grassroots group of more than 15,000 physicians, the President outlined the key principles in his reform effort, including preventing insurance companies from dropping coverage when people get sick or denying coverage for pre-existing conditions. The President was silent on the public insurance option, which is opposed by Republicans and some Democrats. However, the President did say that a proposed health insurance exchange should include affordable options.

More information about the President’s speech is posted [here](#).

Congress

Senate Committee Completes Health Reform Markup; Final Vote To Come This Week

After a seven-day markup, the Senate Finance Committee concluded its consideration of more than 110 amendments to health reform legislation proposed by Chairman Max Baucus (D-MT). The committee debated amendments that would reform the health care delivery system, expand coverage, and determine how to pay for reform. On the final day of

the markup, the committee approved a compromise amendment offered by Senators Charles Schumer (D-NY) and Olympia Snowe (R-ME), which would lower the “hardship waiver” from 10 percent to eight percent. The waiver allows individuals or families who would spend more than eight percent of their income on insurance to be exempted from the mandate to obtain health coverage and the penalty for failing to comply with the requirement. The amendment phases in the penalty over five years. No penalty would apply in 2013; the penalty gradually increases to \$750 for an individual and \$1,500 for a family by 2017. The vote was 22 to 1, with Senator Jon Kyl (R-AZ) as the lone opponent. The committee also accepted an amendment offered by Senator Maria Cantwell (D-WA) by a vote of 12 to 11. Cantwell’s amendment would authorize HHS to establish a “basic health plan” that will provide affordable coverage to individuals between 133 and 200 percent of the federal poverty level. Under Cantwell’s measure, states opting to create such a plan would negotiate and purchase health coverage for these individuals.

The committee is withholding a final vote on the proposal until the Congressional Budget Office can produce a cost estimate on the changes made to the Chairman’s mark. Although CBO officials have pleaded for more time to produce the cost analysis, Baucus has said he hopes the committee can approve the amended mark this week. However, as of press time, Senators Jay Rockefeller (D-WV) and Ron Wyden (D-OR), both members of the Finance Committee, had not yet committed to supporting the proposal. If both Senators vote with all Republicans in rejecting the Chairman’s mark, the proposal cannot

be reported out of committee. There are 13 Democrats on the Finance Committee and 10 Republicans. Senate Democratic leaders have indicated that the bill may come to the floor as early as the week of October 12.

The amended Chairman's mark is available [here](#).

House Leaders Melding Reform Bills; Timing of Floor Action Unclear

House Democratic leaders continue to work on melding the different versions of health reform legislation produced by three House committees. Although leaders reported they were close to a compromise early last week, Majority Leader Steny Hoyer (D-MD) said the reform bill will be ready for lawmakers to review at some point in October but suggested the measure might not reach the floor until November. Blending the bills has been difficult, with the main sticking point being how to structure a government-run insurance option to be included in the bill. Speaker Nancy Pelosi (D-CA) has said a public option will be included in the final House bill.

In a September 30 letter, a group of 55 House Democrats called on Pelosi and Hoyer to include a public insurance option in reform legislation. However, the letter did not specify how the plan should be structured. "When weighed against other ideas, the public option remains the most effective tool to bring about competition, choice, efficiency, transparency, and cost reduction in the marketplace," the letter said. Representative Chris Murphy (D-CT), who spearheaded the letter along with Representatives Diana DeGette (D-CO) and Lois Capps (D-CA), said many but not all of those who signed on to it support tying the provider reimbursement rates for the public option to Medicare – a position held by left-leaning Democrats. The letter's signatories represent a number of Democratic House coalitions, including some fiscally conservative Blue Dog Democrats in addition to some members of the Progressive Caucus.

Industry

Experts: No Simple Way to Ban Discrimination Based on Medical History

Prohibiting insurance companies from denying coverage or charging higher premiums will not prevent the industry from "cherry-picking" more profitable members, according to economists and health care analysts. Instead of rejecting those with pre-existing conditions, analysts say the industry may use more subtle means of discrimination, such as offering free gym memberships to attract healthy patients or limiting the number of doctors in their networks who treat patients with costly, complicated medical conditions. In addition, analysts say that unless health reform efforts effectively address the problem, the system will continue to reward insurers that avoid, rather than treat, those with illnesses. Plans that do attract costlier members likely will raise premiums, making it difficult for the chronically ill to obtain affordable coverage. "In a competitive market, a good-guy insurer is a patsy," said Karen Pollitz, research professor at the Georgetown University Health Policy Institute. While the Senate Finance Committee reform proposal includes a mechanism that would raise or lower insurer compensation based on the number of sick or healthy members they attract, analysts say a more straightforward way to reduce any "gamesmanship" in the industry is to standardize benefit packages.

Governors Lobby Against Medicaid Expansion

Concerned that a proposed Medicaid expansion would overburden their state budgets, the nation's governors are urging the federal government to take on a larger role in the program. Governors from southern and rural western states have been the most vocal opponents of any Medicaid expansion. "I can't think of a worse time for this bill to be coming," Tennessee Governor Phil Bredesen (D) said. "I'd love to see it happen. But nobody's going to put their state into bankruptcy or their education system in the tank for it." In response, Congressional Democrats are scrambling to protect their states. For example,

Senate Majority Leader Harry Reid (D-NV) reached an agreement with Senate Finance Committee chair Max Baucus (D-MT) to have the federal government pay the full cost of any Medicaid expansion in Nevada. However, House and Senate negotiators are hesitant to make further concessions to the states due to the need to fund other priorities.

Gov. Jindal Outlines Health Reform Principles

In a *Washington Post* opinion piece, Louisiana Governor Bobby Jindal (R) outlined 10 reform proposals to “increase the affordability and quality of health care.” Jindal wrote that the reform effort should include voluntary purchasing pools to “give individuals and small businesses the opportunities that large businesses and the government have to seek lower insurance costs.” Health plans also should be portable so people can keep their coverage when they switch jobs or move across state lines. Jindal’s additional proposals include:

- Medical malpractice reform;
- Require coverage of preexisting conditions;
- Transparency and payment reform;
- Electronic medical records;
- Tax-free health savings accounts;
- Reward healthy lifestyle choices through premium rebates and other incentives;
- Cover young adults by allowing them to remain on their parents’ plans; and
- Refundable tax credits to help make coverage affordable.

The entire column is available [here](#).

Upcoming Congressional Action

The Senate Finance Committee plans to meet this week to vote on reform legislation.