



Bryan Cave Health Reform Update

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Congress

Senate Leaders, White House Officials Negotiate Health Reform Bill

Following the Finance Committee's approval of health reform legislation on October 13, Senate Democratic leadership and members of the Obama Administration have been meeting behind closed doors to merge that committee's bill with the version approved by the Health, Education, Labor, and Pensions (HELP) Committee in July. The group hopes to produce a compromise bill in the near future. However, the group has yet to agree on whether to include a government-run insurance option in the compromise bill or a system of insurance cooperatives, as recommended by the Finance Committee. The blended bill could come to the floor as early as the week of November 2, although the timing of floor action will largely depend on when an agreement on the merged bills is struck and how long the Congressional Budget Office (CBO) takes to produce a cost estimate of the merged bill.

Senator Tom Harkin (D-IA), chairman of the HELP Committee, recently said he expects health reform legislation that includes a public insurance plan to reach President Obama's desk by the end of the year. Harkin said he is advocating for the inclusion of a government-run plan with negotiated provider reimbursement rates as approved in the HELP legislation. In an October 16 conference call, Harkin said there are at least 52 Senate Democrats who strongly support the HELP version of the public plan

and that the handful of Democrats who do not should "come on board" with the majority of the caucus. However, Harkin said Democrats continue to discuss compromises for the public plan, such as allowing states to opt out and establish health insurance cooperatives or having a "trigger" that implements the public plan if certain conditions in the insurance market are not met. Harkin added that the final bill must include an individual mandate that is strong enough to encourage the purchase of insurance.

Senators Call For 12-Year Data Exclusivity

In an October 9 letter to Senate Majority Leader Harry Reid (D-NV), Senators Orrin Hatch (R-UT), Barbara Mikulski (D-MD), Mike Enzi (R-WY), and Kay Hagan (D-NC) called for the inclusion of a provision to create a pathway for the approval of follow-on biologics in health reform legislation to be considered by the Senate. The letter referenced an amendment sponsored by Enzi, Hatch, and Hagan included in the reform bill passed by the Senate HELP Committee which would "ensure parallel and equally important goals of making life-enhancing and life-saving biotechnology products more accessible and more affordable, while also continuing to foster the ongoing search for new cures and treatment through providing 12 years of data exclusivity for innovator biotechnology companies." The letter said patient groups, research universities, venture capital groups, and innovators have "expressed strongly that a base of 12 years of data exclusivity is crucial to ensure continued growth in the biotechnology industry and future discoveries that will make a difference in the lives of millions of patients."

House Leaders Announce Support For Public Plan

House Democratic leaders recently said they almost have the number of votes they need to include a “strong” government-run insurance plan in health reform legislation. Speaker Nancy Pelosi (D-CA) launched an effort this week to build support among Democrats for a public option that would tie providers' reimbursement rates to those of Medicare. Democratic Whip James Clyburn (D-SC) began surveying the caucus October 21 to determine the level of support for a public option that would pay the Medicare rate plus five percent to most providers. Although the survey has not yet been completed, Democratic Caucus Chairman John Larson D-CT) said, “we think we have the votes now.” However, moderate Democrats have expressed skepticism that there are enough votes for the public plan. Even if there are enough votes, the moderates say there is enough concern about other provisions of the legislation that the bill might still fail on the floor.

Pelosi has tried to win support for a strong public option by appealing to moderates sensitive to the cost of a health bill. A Democratic aide recently said that CBO estimates a bill with a public option tied to Medicare rates would cost about \$871 billion over the next 10 years and a public plan with negotiated rates would cost \$895 billion. Democrats are attempting to keep the cost of health reform below the \$900 billion target established by President Obama. However, there has been some discrepancy about what is meant by that target. A Democratic leadership aide recently said that initial scores from CBO show that the costs of the coverage provisions in the House health reform legislation can meet the \$900 billion mark. But some members of the fiscally conservative Blue Dog Coalition believe President Obama's \$900 billion target should be the limit for the total cost of the bill, not just the limit for the coverage provisions. Blue Dog Co-chair Representative Stephanie Herseth Sandlin (D-SD) said, “We have a disagreement on the \$900 billion number. Some in leadership now say that's what the President meant just on coverage, not total cost of the bill. Well, that comes as a surprise to some of us, news that we got last week that now the

chambers disagree over what the \$900 billion number means,” she said. “It seems that the Senate used the \$900 billion in total cost over 10 [years] for everything, and the House leadership views it as just for the coverage provisions.”

House Acts To Preserve Budget Reconciliation Options

On October 15, the House Ways and Means Committee cleared the way for Congress to move health reform legislation under the reconciliation process, if that becomes necessary, by fulfilling a procedural requirement to send their committee-approved health reform bill (H.R. 3200) to the House Budget Committee by that date. Although Republicans sought to offer 13 amendments to the legislation, they were blocked by the Democratic majority. Chairman Charles Rangel (D-NY) said further discussion of the legislation was unnecessary because the committee's bill was not the product moving to the floor and “our work on health care has been done. This is a housekeeping matter.” But Ranking Republican Member Dave Camp (MI) disagreed, saying the committee should reconsider some measures in light of the “ongoing debate in the Senate” and “new information from the Congressional Budget Office and other experts.”

Attempt To Move 'Doc Fix' Separately Fails

Senate leaders fell 13 votes short in their attempt to move legislation that would cancel a 21 percent Medicare payment cut for physicians in 2010 separately from a comprehensive health reform bill. The Senate failed to garner the 60 votes necessary for a procedural vote on the bill (S. 1776) on October 21, forcing Senate leaders to re-insert a “doc fix” provision back into the broader health system overhaul bill. Separating the “doc fix” issue from the broader reform bill would have freed up billions of dollars that Democratic leaders could have applied to make other changes in a health care bill. The bill's chances for passage were hurt by the fact that the legislation would cost \$250 billion and was not paid for. Across the Capitol, House Majority Leader Steny

Hoyer (D-MD) said on October 14 that no final decisions have been made on how to move a Medicare "doc fix" but that it could be done separately from health reform legislation. An update to the sustainable growth rate (SGR) formula could be a one-year fix or a permanent change, Hoyer said.

White House

White House Indicates President will not Require Public Option

In a series of interviews on the Sunday talk shows, White House aides said President Obama will not demand that a government-run insurance option be part of health reform legislation. In an interview with NBC's "Meet the Press," senior adviser Valerie Jarrett said that while Obama thinks the public plan is the "best possible choice," he will not require it. Obama advisor David Axelrod, while speaking with ABC's "This Week," said the White House would not slow down negotiations to fight for the inclusion of the public option. "The president has very consistently and clearly articulated his support for a public option," Axelrod said. "There are people in the Senate – Republicans and Democrats – who have objections to that. We have to work through these issues, and we're going to do that." White House Chief of Staff Rahm Emanuel spoke with CNN's "State of the Union" and said the public option is not the "defining piece of health care. It's whether we achieve both cost control coverage as well as the choice."

Industry

Second Insurance Industry Report Critical of Reform Bills Issued

On October 14, BCBSA issued a report that concluded that without a strong individual mandate, average annual medical claims for new individual market purchasers five years after reform is enacted are expected to be 50 percent higher compared with today. "This would translate into premium increases

of approximately \$1,500 annually for single coverage and \$3,300 for family coverage in today's dollars for people purchasing new policies," BCBSA said. The study estimated that minimum benefit requirements would increase costs by 10 percent in the individual market and three percent in the small group market under the 65 percent actuarial value proposed in the Finance Committee bill. The report said federal subsidies in the Finance Committee measure will not effectively entice individuals with incomes above 200 percent of the federal poverty level to enroll in a health insurance plan without a stronger mandate to provide coverage. "Weak mandates result in more uninsured," the report said. "Requiring insurers to guarantee issue coverage regardless of pre-existing conditions—without an effective mandate—means that people can wait to purchase coverage until they need it, causing premiums to increase for most new purchasers. We estimate that 12.6 million people will forego coverage, relative to an effective mandate," the report said.

Device Makers Reject Fee on Industry

At its annual meeting October 13, Advanced Medical Technology Association President and CEO Stephen Ubl said the proposed \$4 billion annual fee on the medical device industry included in the reform bill approved by the Senate Finance Committee would be harmful to patients, jobs, and medical innovation. Ubl said the proposed fee, which amounts to a \$40 billion tax on sales over 10 years, would be "a devastating proposal for a large share of our membership." Ubl said that the device industry is already making substantial contributions to the cost of health reform through billions of dollars in cuts to its major customers like hospitals, clinical labs, durable medical equipment providers, and imaging services. Since the fee would be apportioned based on market share, Ubl said it is very likely it will be paid both by profitable companies and unprofitable ones. If a final bill is passed that includes the device fees, Ubl said it will result in one of two things: lost jobs as the fee is absorbed by the manufacturers or additional costs being passed on to consumers.