



Bryan Cave Health Reform Update

March 16, 2010

House Vote Expected Sunday

After more than a year of debate, Congress appears to be nearing final vote on comprehensive health reform legislation. Congressional Democrats and President Obama are working diligently to build support for a vote scheduled for Sunday, March 21. House Democrats need 216 votes to pass health reform legislation. They will use the budget reconciliation process, which allows legislation to be passed with 51 votes in the Senate, to shepherd health reform legislation through the Senate. Republicans are steadfast in their opposition to the legislation, forcing Democrats to rally a sufficient number of their caucus in support of the bill.

Democrats kicked off a 72-hour public review of health reform legislation the afternoon of March 18 when they unveiled a budget reconciliation package (H.R. 4872) that would revise the Senate-passed health reform bill (H.R. 3590) with changes acceptable to House Democrats. Congressional Democrats and President Obama are optimistic the House will pass the Senate-passed bill, as well as the reconciliation package, on Sunday. However, at this time, Democrats remain a few votes shy of the 216 needed. With only a handful of undecided Members remaining, House leaders continue to whip the vote. In an effort to persuade recalcitrant House Democrats, President Obama canceled a trip to Indonesia in order to keep lobbying undecided House Members. He also has made numerous public appearances over the past week to push the legislation. To make their case for the package, Democrats are touting a preliminary cost estimate released by the Congressional Budget Office that calculates that the Senate reform bill, as amended by the reconciliation bill, would cost \$940 billion over 10 years and would reduce federal deficits by \$138 billion over the same time period. Democratic leaders hope the sub-trillion dollar number and deficit reduction will convince moderate Democrats to support the bill.

In addition to opposing the content of the Democrats' health reform legislation, Republicans remain concerned at the process by which reform legislation will be considered. Although a final decision has yet to be announced, House Democrats are considering two different procedural methods to pass the health reform and reconciliation bills. The first, and more controversial of the two options, would combine the Senate bill with the reconciliation package. The House would then vote on a self-executing rule that would "deem" as passed the Senate reform bill and reconciliation bill. In this way, Democrats would avoid taking a potentially difficult, direct vote on the Senate reform bill. The second option, which appears to be favored by leadership, would allow for a vote on a self-executing rule "deeming" the Senate bill passed and then provide for a separate, direct vote on the reconciliation package. The House Rules Committee is scheduled to meet Saturday morning to determine how the reform bill will be considered on Sunday.

Assuming the House passes both the Senate-passed reform bill and the reconciliation bill, the Senate bill will be sent directly to the President for his signature. Once he signs it into law, then the Senate will take up the



House-passed reconciliation language. Although House Democratic leaders have gone to great lengths to ensure that no provisions in the reconciliation package could be subject to procedural challenges in the Senate, if the Senate makes any changes to the House-passed reconciliation bill, it must be returned to the House for approval before it is sent to the President for his signature.

CBO Issues Preliminary Score

On Thursday, the Congressional Budget Office issued a preliminary estimate of the spending and revenue effects of the reconciliation bill. The CBO's preliminary estimate considers the Senate-passed bill and the reconciliation package would save \$138 billion from 2010 to 2019 and reduce the number of uninsured by more than 30 million. Over a 10-year period, the legislation would cost \$940 billion, according to the CBO. CBO also estimated that about 95 percent of the nonelderly population, excluding illegal immigrants would have health insurance if the legislation is signed into law. Of the newly insured, 16 million will be enrolled in Medicaid or the Children's Health Insurance Program.

Reconciliation Language Released

The reconciliation language includes a number of changes to the Senate-passed bill. For example, the bill repeals the inpatient expansion of the 340B drug discount program. "Orphan" drugs would be carved out from the outpatient expansion and the Senate language that would have allowed hospitals to purchase 340B drugs from their group purchasing organizations is eliminated. The Senate bill included language that would have required the federal government to cover 100 percent of the Medicaid expansion for Nebraska. This language is replaced in the reconciliation bill with 100 percent federal Medicaid funding for newly eligible beneficiaries in every state for 2014 through 2016. After 2016, states will pay a share of the cost. The reconciliation bill also repeals provisions in Senate bill that would establish an annual fee on medical device manufacturers. Instead, an excise tax on medical devices sales equal to 2.9 percent of the price of the device would be imposed beginning in 2013. Some devices would be exempt from the tax, such as Class I devices, eyeglasses, contact lenses, hearing aids, and other devices that are sold to the general public at retail outlets. The reconciliation bill includes a tax on high-value "Cadillac" health insurance plans, but significant changes have been made from the Senate bill. The tax would be delayed from 2013 to 2018 and the threshold for the tax would rise from \$8,500 in the Senate bill to \$10,200. The threshold for family coverage would rise from \$23,000 in the Senate bill to \$27,500. In addition, the thresholds for the tax would be indexed to the consumer price index, rather than the consumer price index plus one percentage point as in the Senate bill. It is expected that more people will have to pay the tax with the change.

A section-by-section analysis of the reconciliation bill is available from the House Rules Committee [here](#).