Bryan Cave Health Reform Update

March 24, 2010

President Signs Health Reform Into Law; Senate Begins Reconciliation Debate

After more than a year of debate, President Obama signed into law comprehensive health reform legislation on March 23. The "Patient Protection and Affordable Care Act" (H.R. 3590) was passed by the House on March 21 by a vote of 219 to 212 and by the Senate on December 24, 2009. During the signing ceremony, President Obama said, "Today, after almost a century of trying; today, after over a year of debate; today, after all the votes have been tallied –- health insurance reform becomes law in the United States of America."

Also on March 21, the House passed a "corrections" bill (H.R. 4872) using the budget reconciliation process that would make changes to the Senate health care reform legislation (H.R. 3590) approved by the House earlier in the night. The reconciliation bill passed by a vote of 220 to 211. No Republicans voted for the reconciliation bill or the Senate health reform bill; 33 Democrats joined Republicans in opposing the reconciliation bill and 34 Democrats joined Republicans in voting against the Senate bill.

The Senate began debate yesterday on H.R. 4872 following the President's signing of the Senate reform bill. 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. Votes in the Senate are expected to begin some time after 5:00 today.

Below is an overview of the provisions included in the reconciliation bill and the Senate health reform bill (H.R. 3590). Summaries of these measures are attached or linked to in this e-mail.

House Passes Senate Reform Bill and Reconciliation Bill

Democrats kicked off a 72-hour public review of health reform legislation 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. In the days leading up to the March 21 votes, President Obama canceled a trip to Indonesia in order to persuade undecided House Members to support the Senate bill. He also made numerous public appearances to push the legislation. To make their case for the package, Democrats touted a preliminary cost estimate of health reform legislation released by the Congressional Budget Office that calculates that the Senate bill, as amended by the reconciliation bill, would cost $940 billion over 10 years and would reduce federal deficits by $143 billion over the same time period. The legislation would reduce the number of uninsured by more than 30 million. CBO also estimated that about 95 percent of the non-elderly 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.

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 2.3 percent (reduced from 2.9 percent by the manager's amendment to H.R. 4872) of the price of the device would be imposed beginning in 2013. 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. The manager's amendment to the reconciliation bill, which was adopted with the reconciliation bill, corrects geographic payment disparities for hospitals by providing additional funding to underpaid facilities compared with the Senate bill. It also would strike the name "Medicare Tax" and rename the new 3.8 percent hospital insurance tax on unearned income as the "Unearned Income Medicare Contribution" and modify the amount to be collected annually from 2011 to 2019 for the tax on sales of brand-name pharmaceuticals for use in government health programs.

A section-by-section analysis of the reconciliation bill is available from the House Rules Committee here. A summary of the manager's amendment can be read here.

Senate Bill Overview

As passed by the House and Senate, H.R. 3590 would provide coverage for 94 percent of Americans and would reduce the number of uninsured by 31 million people by 2019. The bill would include further restrictions on private insurers, including requiring plans to spend more of their revenues on clinical services and quality activities, an immediate ban on pre-existing condition exclusions for children, and guaranteeing appeals of coverage denials. It would establish state-based insurance exchanges and require individuals to acquire health coverage. Employers with more than 50 employees that do not offer coverage would be required to pay a fee to the federal government to help pay for the coverage of employees lacking coverage. The bill does not include a public insurance option. Instead, the bill would require the federal Office of Personnel Management, which currently administers the Federal Employees Health Benefit Program, to contract with private health insurers to offer at least two nationwide plans, one of which must be non-profit, through the exchanges. OPM would be responsible for negotiating with insurers and ensuring that the plans meet minimum standards, just as it does for FEHBP. FEHBP would remain a separate program with its own risk pool. The bill also would expand Medicaid coverage to 133 percent of the federal poverty level and create a voluntary long-term care insurance program. The bill offsets the cost of implementing the reforms by levying "fees" on several segments of the health care sector, applying an excise tax on high-cost health insurance plans, and increasing the Medicare payroll tax for high-income taxpayers from 0.5 percent of payroll to 0.9 percent.

The text of the Senate health reform bill as well as several summaries and overviews are located here.

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