



# Bryan Cave Health Reform Update

## January 28, 2010

President Obama on January 27 delivered his State of the Union Address to a joint session of Congress. While focusing his remarks on the economy and job creation, he called on Congress to pass health reform legislation. Saying that the nation was closer than ever to enacting health insurance reform, President Obama said reform was needed to protect American families from medical bankruptcies and the worst abuses of the insurance industry. The President reiterated that legislation he supports would prevent insurance companies from denying care due to pre-existing conditions, would allow people to keep their doctors, would reduce premiums, and would reduce the federal deficit.

President Obama also acknowledged the political situation surrounding the health care debate. "The longer it was debated, the more skeptical people became," he said. "I take my share of the blame for not explaining it more clearly to the American people. And I know that with all the lobbying and horse-trading, the process left most Americans wondering what's in it for them." Despite the political setbacks, the President encouraged Congress to move forward with reform. "Do not walk away from reform. Not now. Not when we are so close. Let us find a way to come together and finish the job for the American people. Let's get it done." The President also criticized Republicans for obstructing the progress of legislation in the Senate and urged Democrats not to "run for the hills." He added, "I would remind you that we still have the largest majority in decades, and the people expect us to solve some problems."

### **Democratic Procedural Options and Reactions**

To move forward, Democrats must determine that abandoning their health reform legislation carries greater political risks than moving forward with it. To advance health reform legislation, House and Senate leaders must agree on the substance of the bill and the procedural maneuvers that would allow it to pass both chambers. While many Democrats had looked to President Obama to provide a way forward, the President did not address the tactics of how to enact health reform legislation. As a result, Congressional leaders have been meeting to determine their next move. Congressional aides have said they hope to have a plan by the end of the week. Democrats reportedly are considering a number of options to pass the legislation:

- The House has the option of simply passing the Senate-passed bill, clearing the way for the President to sign the Senate bill into law. While this would be the simplest and quickest option, the House leadership lacks the votes to pass the Senate bill as it is currently written.
- Democratic leaders are considering using the budget reconciliation process to pass compromise legislation. Obama administration officials are rumored to be working with the House and Senate

leadership on such a strategy. Bills considered in the Senate under budget reconciliation cannot be filibustered and require a simple 51-vote majority for passage. However, reconciliation can be used only for measures that directly affect government spending, revenue and taxes. Provisions outside of government spending would be subject to a point of order objection, which requires 60 votes to overcome. Consequently, many policy provisions included in the House and Senate bills could not be addressed through reconciliation, including language addressing abortion coverage and many of the health insurance market reforms. In addition, Sen. Blanche Lincoln (D-AR) and Sen. Evan Bayh (D-IN) publicly have stated their opposition to using the reconciliation process to enact health reform.

- Another option also uses the reconciliation process to resolve differences between the House and Senate. Under this option, both the House and Senate would pass reconciliation legislation amending the comprehensive bill already passed by the Senate. This would involve a two-step process where the House would pass a reconciliation bill that makes changes to the comprehensive Senate bill. The Senate would then need to pass the same reconciliation bill. This reconciliation bill would require only 51 votes for passage. Either before or after both houses pass the reconciliation measure, the House would pass the Senate's comprehensive health reform bill. By passing the Senate-passed bill, the House would eliminate the need for the Senate to take another vote on a comprehensive bill.
- Speaker Pelosi also has suggested a strategy that would involve passing a series of smaller bills. These would include bills to repeal the anti-trust exemption for the insurance industry, expand coverage for children, and amend the Medicare reimbursement system for hospitals and doctors. Today, aides to Speaker Pelosi said the House leadership intends to bring such legislation to the floor before the Presidents' Day recess beginning February 15. There is concern, however, that if the House adopts this approach, the Senate lacks sufficient floor time to debate and pass a series of smaller bills over the expected opposition of a united Republican caucus.
- Democrats also reportedly are considering scaling back their reform goals to draft one bill that could win the support of some Republicans. Such a "skinny" bill approach would eliminate the controversial provisions from the legislation in an effort to reach a bipartisan agreement that could pass both the House and Senate.
- Lastly, the congressional leadership may opt to move to other agenda items, allowing the health reform effort to die. There is considerable concern among Democratic lawmakers and strategists that such a "wiping of the hands" would be politically disastrous.

Congressional reaction to the speech indicated that despite the Democratic leadership's effort to move forward, there may not be support to do so. For example, Sen. Mary Landrieu (D-LA) said it is unlikely that health reform will pass as a comprehensive package. "I think right now it's less than 50-50. It's very hard to see a path forward in the current arrangement." She added that there is not sufficient support to use a reconciliation strategy." Sen. Evan Bayh (D-IN) said that although President Obama "advocated effectively" for health reform, the situation is "very complex, procedurally stuck. No speech can untie that Gordian knot." He also said that "the ball is in the House's court on health care." Sen. Mark Pryor (D-AR) said it was "a real possibility that health care is at a stalemate and you can't solve it this year." He added, "It is hard to see how last night fundamentally changes it." Nevertheless, other Democratic Members of Congress worry about the political consequences of failing to deliver anything on health care and continue to work on alternatives.

## **Republican Response**

Virginia Gov. Bob McDonnell (R) delivered the Republican response to the President's remarks. While also focusing on jobs and the economy, McDonnell said Republicans understood the need to reform the health care system. He said Republicans supported efforts to allow businesses and individuals to buy health insurance across state lines and efforts to reduce frivolous lawsuits, which increase the cost of care. He said that most Americans do not want health care turned over to the federal government. House Republicans also reintroduced their health reform plan. The plan would restructure the tax code and shift the ownership of health coverage from government and employers to individuals. Under the plan, a refundable tax credit of \$2,300 for individuals and \$5,700 for families would be provided for the purchase coverage in any state. This coverage could be kept in the event of a move or employment change.