

Health Care Reform  
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## Senate Finance Committee Passes Bill; Critics Sharpen Attacks

On Tuesday, October 13, the Senate Finance Committee ("SFC") passed a health reform bill by a vote of 14 to 9. After months of negotiations with both Democratic and Republican colleagues, Chairman Max Baucus (D-MT) was able to win committee approval of a centrist reform proposal which is still drawing intense criticism from both the left and the right. Sen. Olympia Snowe (R-ME) was the lone Republican on the SFC who voted for the bill. No Congressional Republican other than Snowe has supported any of the bills which have emerged from the five Congressional committees with oversight over health care reform.

With the passage of the SFC bill, the United States is as close as it has ever been to passing legislation aimed at obtaining universal health care coverage. Even though the SFC bill achieves President Obama's health reform goals – most notably, the goal of *not* adding to the federal deficit – this bill has not muted the health reform debate. To the contrary, the passage of the SFC bill has intensified debate over key reform measures by lawmakers and lobbyists who have sharpened their attacks and, in some cases, laid down ultimatums against the White House.

The most vigorous debate involves the following health reform measures:

- **Public Option:** Right now, there are at least four variations of a public option under discussion in Congress.
- **Employer Mandate:** The SFC bill does not require employers to offer health insurance for their employees, but does require employers with over 50 employees to reimburse the federal government for subsidiaries given to employees who purchase insurance on their own. Liberals want an employer mandate while conservatives do not.

- **Individual Mandates and Penalties:** The SFC bill was amended to reduce the penalties on Americans who do not obtain health insurance. Health insurers and hospitals want stronger incentives for Americans to obtain health insurance coverage. The concessions to which they are agreeing in return for their support of health reform legislation are contingent on moving the greatest number of the uninsured into health insurance coverage.
- **Size of Subsidies:** Many in Congress are still pushing for larger subsidies to make insurance more affordable for Americans with low and modest incomes.
- **Paying for Health Reform:** The SFC bill would offset the cost of health reform by taxing health insurers on high cost "Cadillac plans." However, this proposal is adamantly opposed by unions and health insurers. The SFC bill also authorizes spending cuts in the Medicare Advantage program which Medicare Advantage plans and seniors oppose. The House of Representatives has passed a proposal to add a surtax on the wealthy, but this approach is met by strong philosophical and political objections by those who believe that health care reform should be financed only from savings in the health care system and that no select group should have to bear the burden of ensuring health reform for all Americans.

Although the SFC vote last week was a momentous legislative accomplishment, it may only be the end of the *beginning* of the health reform debate.

## Senate Committee Explores Higher Health Insurance Costs for Women

While some Senators met behind closed doors to hammer out a combined health reform bill, members of the Senate Health, Education, Labor, and Pensions ("HELP") Committee held hearings last week on gender discrimination and the cost and availability of health insurance for women. At Thursday's hearing, several women testified with personal experiences regarding the difficulty in obtaining insurance because of their gender, and recited data showing that women are frequently charged as much as 48 percent more than men for the same coverage. A representative from America's Health Insurance Plans ("AHIP"), a trade association including most large health insurers and HMOs, said that AHIP members are committed to end-

ing policies that charge women higher rates than men based on their gender or pre-existing conditions such as pregnancy, but that health reform legislation must include an individual mandate for all Americans to obtain health coverage. The individual mandate is seen as a way to spread the risk for such things as pre-existing conditions and gender differences among many more insureds obtaining coverage from health plans.

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## The Doc “Fix” is a Shrewd Play by the Democrats

Last Thursday, Sen. Debbie Stabinow (D-MI) offered a bill to repeal the Medicare payment formula, known as the Sustainable Growth Rate (“SGR”), which determines Medicare reimbursement to physicians. The SGR is a cost containment measure which requires that, every year, Medicare spending on physicians be reduced or, if applicable, increased, based on historical spending. However, in practice, cutting physician reimbursement has proved politically untenable. The physician lobby argues that a reduction in their Medicare reimbursement rates is tantamount to legislating a reduction in care for Medicare beneficiaries who are their patients. So, almost every year since 1997 when the SGR was implemented, Congress has approved a short-term fix – typically lasting 12 or 18 months – to avoid physician payment reductions. As a result, the intended Medicare savings from these payment reductions are deferred and they must be recaptured in subsequent years through even deeper cuts in Medicare reimbursement rates. For example, the cost savings that now must be recaptured during 2010 would require that physician reimbursement be cut by 21 percent.

At this point, the SGR is somewhat of a charade since it is highly unlikely that Congress will enforce SGR-mandated cuts to physician Medicare reimbursement. In view of this, health reform legislation was expected to dispose of this perennial problem. However, according to the Congressional Budget Office (“CBO”), freezing physician payment rates for 10 years would cost \$285 billion. Therefore, in his health reform proposal, SFC Chairman Max Baucus (D-MT) chose only to provide another one-year fix to the physician cuts and avoid a permanent fix which would have significantly

increased the cost of the SFC health reform proposal. In contrast, the House Tri-Committee bill did include a permanent fix to SGR, and the \$285 billion is added to the cost of their more expensive reform bill.

In a shrewd move, the Democrats are offering a separate bill to repeal SGR at a cost of \$245 billion. By doing so, the cost of the “physician fix” can be removed from the cost of health reform – whether from the short-term fix in the SFC proposal or the permanent fix in the House Tri-Committee bill. Senate Democratic leaders invoked procedural rules to allow the Senate to bypass the normal committee process and take the Stabinow bill straight to the floor. Initially, Senate Majority Leader Harry Reid (D-NV) intended to move today for cloture to end all debate on the Stabinow bill. Reid later decided to allow for further discussion which may result in amendments to create savings to pay for some or all of the Stabinow bill so that the bill’s entire \$245 billion cost will not simply be added to the federal deficit.

Although Republicans are unhappy with the maneuvering to accomplish the physician fix and the bill still faces procedural hurdles, the larger question is what does the future hold for the House and Senate health reform bills if the physician fix is finally resolved? Will the reduced cost of the health reform bills that result provide flexibility for Democratic leaders to shape the health reform proposals in ways that will appease some of the more vocal critics of these bills? Will a relieved American Medical Association (“AMA”) line up solidly behind the health reform bills and help battle the bills’ critics? As with every aspect of the health reform debate, only time will tell.

## Congressional Leaders Approach Consolidation of Reform Bills With Different Tactics

Senate Majority Leader Harry Reid (D-NV) is taking a closed-door meeting approach to combining the health reform bills which emerged from the Senate Health, Education, Labor, and Pensions and the SFC. Reid is said to be urging key Senate leaders to compromise on the larger issues and not worry about the details in order to keep their eyes on the big picture and larger target of meaningful health reform. In a series of closed door meetings, including at least one at the White House, *The New York Times* reported that Reid is acting more like a coach, encouraging the Committee leaders to forgo the pride of authorship to keep the “win” in sight. For the Senate, a win would mean a bill that can garner 60 votes to defeat a Republican-initiated debate.

Meanwhile, House Speaker Nancy Pelosi (D-CA) has been using the direct approach, asking the key House

Democrats exactly what it will take to get their vote on a final House health reform bill. Pelosi has been meeting constantly with members of the House, with the goal said to be obtaining the strongest bill that can pass the House to provide the most leverage in future negotiations with the Senate over a final health reform law. The biggest issue dividing the proposals appears to be the inclusion and structure of a public option allowing for a government-run insurance program, favored by liberal Democrats and opposed by moderates and conservatives.

Despite the difference in tactics, both leaders are directing their efforts to a future conference committee that would take the final bills passed by the House and the Senate and form them into a single piece of legislation acceptable to both bodies that would then be sent to the President for signature.