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Passage of Senate Health Reform Bill Appears Almost Assured

Early Saturday morning, Senate Majority Leader Harry Reid (D-Nev.) filed a manager's amendment to the Patient Protection and Affordable Care Act (the "Act") which has been debated on the Senate floor since the week following Thanksgiving. The manager's amendment marks the culmination of successful negotiations with 60 Senators (58 Democrats and 2 Independents who caucus with them) – the exact number required to ensure Senate passage of a health reform package. Although the new or modified provisions reflected in the manager's amendment have drawn criticisms from those across the political spectrum, the manager's amendment could be heralded as a triumph in threading together the diverse interests, priorities and philosophies of a variety of Senators whose support is crucial to ending the Republican filibuster that threatens passage of the Senate health reform bill. At this juncture, approval of the Senate health reform bill is nearly assured, with a final vote scheduled to occur late Christmas Eve.

The two most controversial, and hotly debated, measures of the Senate reform package were the inclusion of a government-run health insurance plan and coverage for abortion procedures by health plans which receive federal subsidies. In a deal struck last week, the government-run public option and its Plan B substitute, the Medicare buy-in for individuals aged 55 to 64, had to be dropped to ensure the vote of Sen. Joseph Lieberman (I-Conn.) who threatened to join the GOP filibuster without this concession. Late Friday, after 13 hours of negotiations just that day, Reid was able to broker a compromise on abortion coverage that was acceptable to the remaining holdout, Sen. Ben Nelson (D-Neb.), and to pro-choice advocate, Sen. Barbara Boxer (D-Calif.). Having resolved abortion coverage restrictions to the satisfaction of Nelson, along with the other economic concessions benefiting the State of Nebraska, on Saturday morning, Nelson publicly announced his support for the Senate reform bill, thus giving Reid the 60 votes needed to move a health reform bill through the Senate prior to the Christmas break.

Some of the key features of the hard-fought compromises reflected in the manager's amendment are summarized below:

Abortion Coverage in Subsidized Plans: The most significant feature of the abortion coverage compromise is that states would have the authority to prohibit all health plans being sold within their state through the insurance exchange from covering abortion. As included in the original bill, state exchanges would need to include at least one health plan which does not cover abortion at all, as well as one which *does* cover abortion. Individuals who purchase a health insurance policy through the exchange which does cover abortion would have to write two checks: one to cover all health care services except abortion; and a second check to cover any abortion procedure.

New National Plans: From earlier negotiations, Reid was able to retain in the manager's amendment a measure to create two new national health plans which would be

administered by the federal Office of Personal Management ("OPM") and sold through the health insurance exchanges in each state. OPM would have the authority to negotiate with the national plans for an acceptable medical loss ratio, profit margin and premium. The manager's amendment requires that at least one of the national plans be nonprofit. The national plans would need to be licensed in each state in which they offer health insurance and a group of health insurers could qualify as a single national plan if affiliated by common ownership or through the use of a single national service mark.

Medicaid Expansion on Certain States: The manager's amendment increases the federal subsidization of Medicaid in Vermont, Massachusetts and Nebraska for those individuals who become newly eligible for Medicaid under the reform legislation. The increased federal spending is for a limited duration in Vermont and Massachusetts, but is perpetual in Nebraska.

Medical Loss Ratios: Beginning in 2011, health insurers offering coverage to large employers would have to maintain medical loss ratios of at least 85 percent for those products. Health insurers which offer coverage to individuals or small businesses would have to maintain medical loss ratios of 80 percent or lower.

Individual Insurance Mandate/Penalty: The manager's amendment changes the way penalties are imposed on individuals who do not maintain health insurance, beginning in 2014. Low income individuals would be subject to a lower penalty based on the number of months during the year in which they remained uninsured, with a maximum penalty of \$750 per year by 2016. Higher income individuals who do not maintain health insurance could pay higher penalties up to 2 percent of their annual income.

Employer Mandate: The manager's amendment loosens restrictions imposed on large employers, but targets the construction industry. The original Senate bill imposes penalties upon large employers (50 employees or more) which do not offer their employees health care coverage or which required waiting periods in excess of 30 days before making coverage available. Under the manager's amendment, employers may now impose waiting periods of up to 60 days without incurring the \$600 per employee penalty. However, the manager's amendment requires construction companies with as few as five employees to offer employee health care coverage or pay a fine.

Other Changes to Win Senate Support: The manager's amendment also includes more funding for community health clinics and an extension of the Children's Health Insurance Program which were championed by liberal Senators. Moderate Senators were able to win concessions which furnished more immediate financial assistance to individuals working in small business. Under the manager's amendment, middle income individuals who earn too much to qualify for federal subsidies would be given a voucher to give them the free choice to forego

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Passage of Senate Health Reform Bill Appears Almost Assured (cont'd.)

health insurance offered by their employers and purchase individual health insurance through the exchanges. A group of freshman Senators were able to win inclusion of greater cost containment measures and more aggressive

timing on the implementation of cost containment pilot programs under the control of the Department of Health and Human Services.

CBO Score Boosts Senate Reform Efforts

After many days of anticipation, the Congressional Budget Office ("CBO") and the staff of the Joint Committee on Taxation have released the long awaited budgetary report on the Act as incorporated with Reid's manager's amendment. Overall, the CBO estimates that Reid's amendment will cut the deficit by \$132 billion over the 2010-2019 period and cost \$871 billion. The CBO originally estimated the bill to cost \$848 billion and cut the deficit by \$130 billion. According to Reid's office, the \$23 billion price difference is due largely to the fact that the manager's amendment does not include a public health insurance plan. Such a positive CBO score has helped Democrats finally secure the 60 votes needed to pass the legislation.

new exchanges would face premiums at about 10 to 13 percent higher in 2016 than the average premium for non-group coverage in that same year under current law. The CBO anticipates this increase primarily because the typical insurance policy in this market would cover both a substantially larger share of the average enrollee's costs for health care and a slightly wider range of benefits. The CBO also concluded that the Act would have much smaller effects on premiums for employment-based coverage and estimates that the change in the average premium per person resulting from the Act could range from an increase of 1 percent to a reduction of 2 percent in 2016, relative to current law.

The CBO report released this weekend estimates that the Act will now increase the number of non-elderly residents who would become insured from about 83 percent currently to about 94 percent. Approximately 26 million people would purchase their own coverage through the new insurance exchanges, and there would be roughly 15 million more enrollees in Medicaid and CHIP. The CBO also concluded that, on average, insurance premiums will be the same as previously projected when the CBO scored the Act with a public option. Thus, according to analysis released on November 30, many premiums would not increase under the Act but those buying insurance individually or through

In an attempt to predict the effects of the Act beyond the first ten years, the CBO reported that the legislation would reduce the federal budget deficit over the ensuing decade by about one-half percent of the gross domestic product ("GDP"). However, on Sunday, CBO Director Doug Elmendorf sent a letter to Reid stating that, rather than being reduced by one-half percent, the legislation would reduce the federal budget deficit by a range between one-quarter percent and one-half percent of GDP. This correction arose after Republicans encouraged a re-analysis of the Medicare cuts and changes evaluated by the CBO.

Santa May Bring Administration Big Gift

Last minute gift giving may have a big boost on Christmas Eve, when the Senate's health reform package is scheduled for a final vote. Following an early morning vote today at 1:00 a.m., Reid marshaled all the weary Democrats and his independent "swing vote" Senators to vote 60-40 to end the Republican filibuster of the manager's amendment to the reform bill. Following several more votes in the next few days, the final critical vote is scheduled for 7:00 p.m. Christmas Eve. Media reports are giving Reid a crucial victory despite Senate Minority Leader Mitch McConnell's accusations that the Democrats were presiding over "a mess" that represented "a blind call to make history."

Reid's horse-trading efforts over the past weeks would have been for naught if he had been unable to capture the votes of Lieberman, the former Democratic Vice Presidential nominee who turned Independent to maintain his Connecticut Senate seat, and Arlen Specter, the long-term Republican Senator from Pennsylvania, who switched political parties in March of this year. Months ago, Reid decided to allow Lieberman to keep his coveted chairmanship of the Homeland Security Committee after Lieberman publicly backed the Republican Presidential nominee, John McCain. And, Reid made major efforts behind-the-scenes to recruit Arlen Specter to the Democratic Party. At the time, several senior Senate Democrats criticized the deal Reid

made to woo Specter. However, this morning, both Lieberman and Specter voted with the Democrats to cut off debate of Reid's manager's amendment, setting it up for a final Senate vote. There were no Republicans voting for the measure, a tribute to McConnell and his efforts to hold his party votes together through the emotion-filled debate.

Up to four additional procedural votes are required before the Senate health reform bill can be advanced to the House for consideration. It is anticipated that each of the additional votes will mimic the party-line 60-40 vote from earlier today. The House, in turn, will review the provisions that have been added and amended over the last several weeks. It is expected that a conference committee of Senators and Representatives will be convened quickly after Congress returns from the Christmas recess. The Senate conferees may be prepared to negotiate on some points with the House, but conventional wisdom suggests that the Senate may have precious little to give up or risk losing a single vote which would prevent passage of the final conference bill once it returns to the Senate. All Democrats hope that the conference process will be rapid and relatively smooth to allow both chambers to agree on the health reform to send to the President before the State of the Union address in January 2010.