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Health Care Reform Stalled - Indefinitely?

The election last Tuesday of Republican candidate Scott Brown to fill the Massachusetts Senate seat held by Democratic stalwart, Edward M. Kennedy for over four decades sent a shockwave through the Democratic Party and may have dealt a serious blow, perhaps fatal, to health reform efforts in the 111th Congress. Senator-elect Brown campaigned on the promise that he would be the 41st vote to ensure that Senate Republicans could sustain a filibuster of a compromise health reform bill under negotiation among the White House and Democratic Congressional leaders. The wave of public anger at Washington D.C. and its health reform plan on which Brown rode to an easy victory over Attorney General Martha Coakley (D-Mass.), and the Senate's loss of its filibuster-proof majority, brought health care reform efforts to a screeching halt last week.

With the sting of the Brown victory still fresh in their minds, Democratic leaders and their advisors spent last week considering the following four options:

- Pass Senate Bill and New Companion Bill:** The House could approve the Senate's health reform bill and then allow Democratic leaders to develop another bill to fix the objectionable portions of the Senate bill, based on the negotiations which have occurred to date. The companion bill could be moved through Congress by the budget reconciliation process which requires only 51 votes in the Senate to pass. However, in the budget reconciliation process, only portions of the Senate bill that have a fiscal aspect could be changed. Budget reconciliation would permit removing the special federal subsidizing of the Nebraska Medicaid program and could increase middle class subsidies to purchase insurance. However, issues such as restricting funding of abortion coverage, the eligibility of undocumented immigrants for health care coverage sold through exchanges or whether to have a state or national exchange or public option could not be addressed by reconciliation.
- Pass Senate Bill As Is:** House Speaker Nancy Pelosi (D-Calif.) could present the health reform bill passed by the Senate on Christmas Eve to the House of Representatives for an up or down vote. The House would have to approve the Senate bill word for word (without even a single comma changed). This would send the Senate health reform bill, now approved by the House, to the President for signature. Although this is the simplest option, Speaker Pelosi has indicated that she does not have the votes to approve the Senate reform bill as there simply is not enough support among House Democrats to approve the Senate bill without the compromises that have been the subject of negotiation over the past several weeks. The liberal Members remain opposed to the excise tax on "Cadillac" health plans and are looking for higher subsidies to assist the middle class to purchase health insurance. Pro-Life Members still have not become comfortable with what they view as more lax restrictions on the use of public funds to cover abortion procedures. Then, there are the pragmatic House Members who believe that the Brown election evidences the public's repudiation of the current health reform proposals and who are leery about supporting an initiative that lacks broad public support.
- Vote on a Bill Before Brown is Seated:** In theory, the Senate and House could approve a compromise health reform bill on which they have been working before Senator-elect Scott Brown is sworn into office. This theoretical possibility was being considered even before the election results were known, but ultimately rejected as politically untenable. On election evening, once Brown was declared the victor, Sen. Jim Webb (D-Va.) issued a press release indicating that no votes on health care reform should occur until Brown was seated. So, even the slightest possibility that the Senate would approve a reform bill before Brown was sworn into office was squelched upon the release of Webb's press announcement. Moreover, there was no evidence that Congress was close enough to completing and scoring a compromise health reform bill which would attract enough votes to pass both chambers of Congress.
- Scale Back Health Reform:** There has been considerable discussion given to the possibility of starting over, as opposed to giving up. There is still hope that bipartisan support could be found for a scaled-down health reform bill which proposes more modest changes, and which tackles a limited number of concerns or which adopts

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Health Care Reform Stalled - Indefinitely? (cont'd.)

different approaches and considers other measures, such as medical practice reform, around which Republicans might rally. Despite the appeal to this option, from a political perspective, there is still concern that continued efforts focused on health reform might further anger the public, especially since the prevailing public view is that the President and Congress have done too little to turn around the economy and create jobs. From a policy perspective, there is still a concern that reform which is not comprehensive may be ineffectual.

With no good options available, the President and Democratic leaders last week chose to do nothing. A cooling off period was warranted since there was not the political will or the votes to pursue any particular course of action.

Still, President Obama and Democratic Congressional leaders remain publicly optimistic and have announced that they still are considering their options for moving forward. However, Democrats, as a group, seem far from united as some favor pushing a comprehensive health reform plan through Congress at all costs while the inclinations of others range from scrapping the reform efforts altogether, finding a scaled-back plan or piecemeal approach that can be approved with bipartisan Congressional support, to going back to the drawing board and crafting a completely new health reform bill. In the wake of these disparate views, the hand-wringing and finger-pointing, the Republican Party is emboldened by the Brown victory and their ability to affect the legislative outcome of the top domestic priority of a Democratic President and his Democratic-controlled Congress.

As we begin the week, the future of health reform is, at best, uncertain. There is uncertainty as to what happens next. And, even if the President decides to push health reform forward now or later in the year, there is much uncertainty as to what health reform might look like. Health industry groups who created a din of objection to various aspects of the health reform bills at various times are more bewildered than jubilant since their efforts and hard-fought compromises were given in the hopes of seeing meaningful reforms to a system still viewed as hamstrung by rising costs and in need of change. There is some hope to still reform the insurance industry – the convenient foe of the White House and Congressional Democrats as they tried to garner

public support for their comprehensive health reform plans. However, to eliminate pre-existing condition exclusions and mandate guaranteed-issue health insurance could very well create a death spiral without strong measures to ensure that young and healthy Americans are included in the pool of insureds. Such a limited measure would not likely curb rising insurance premiums, but give rise to significant increases.

Hospitals and other providers who have been critical of health reform efforts during these many months because of what they have characterized as the anemic efforts to achieve cost containment are now exhorting the Administration to reform the Medicare payment system in ways that will contain health care costs. Measures that are being promoted include the bundling of payments to hospitals and practitioners for an entire episode of care and rewarding health care providers for quality and value in providing services.

President Obama's state of the union address on Wednesday may shed some light on future health reform efforts. In the short run, it is very likely that President Obama may turn his immediate attention to a bipartisan jobs creation bill and other measures to boost the sluggish economy. Although the timing might not be ideal and the path no less rocky, following these needed measures, there still would be time for President Obama and the 111th Congress to pass some version of health reform in 2010. This may well be facilitated if the health industry remains positively engaged in the effort. The fact remains that our health care payment systems do not provide appropriate incentives to contain costs, and the growing millions of uninsured or underinsured Americans will continue to be a drag on an economy which may take years to fully recover.