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One More Health Reform Bill to Consider: The President has a Proposal

On February 22, President Obama released an 11-page health reform proposal to illuminate the Administration's way forward on comprehensive health reform and to provide a starting point for discussions at the President's bipartisan health care summit later that week. The proposal is intended to bridge the differences between the Patient Protection and Affordable Care Act passed by the Senate and America's Affordable Health Choices Act of 2009 passed by the House of Representatives, but is based largely on the Senate reform bill which would need to be amended to achieve the President's objectives. The President's proposal also includes a few new ideas borrowed from Republican lawmakers. Overall, the President's health reform package – *i.e.*, the Senate bill, as amended by the President's modifications – is estimated to cover more than 31 million Americans and estimated to cost \$950 billion over 10 years. However, the cost of the President's package would be offset by spending cuts and tax increases and is supposed to reduce the federal deficit by approximately \$100 billion over 10 years.

The President's health reform proposal, when viewed in relation to the Senate health reform bill, is intended to accomplish the following:

- Increases federal subsidies to help families with annual incomes below \$55,000 pay for health insurance.
- Increases tax credits for families with modest incomes to help defray out-of-pocket amounts which they pay under their health insurance (e.g., deductibles, co-payments and amounts in excess of covered benefits).
- Increases tax credits to small businesses to help them purchase insurance and reduces penalties payable by smaller employers which do not offer health insurance.
- Increases funding to community health centers to \$11 billion for services and construction.
- Lowers the penalties which individuals pay if they fail to maintain mandated health insurance.
- Prevents brand pharmaceutical companies from entering into "pay-for-delay" deals that keep generic equivalent drugs off the market for a longer period of time.
- Delays the onset of the 40 percent excise tax on high value "Cadillac" health insurance plans and increases the threshold on plans which may be taxed.
- Increases or alters fees on health insurers, pharmaceutical companies and medical device companies, but delays their implementation.
- Imposes a 2.9 percent Medicare tax on passive income (e.g., income from interest, dividends, royalties and rents) received by high wage earners.
- Restructures payments to Medicare Advantage plans by gradually phasing in benchmark payments based on a particular area's Medicare fee-for-service costs, and provides bonuses for quality and member satisfaction.
- Closes the Medicare Part D donut hole.
- Eliminates the special Nebraska Medicaid deal and provides 100 percent federal funding to the states for newly eligible Medicaid beneficiaries.
- Expands measures to reduce waste, fraud and abuse.

Is Health Reform Headed to Reconciliation?

Since the election of Scott Brown (R-Mass.) to the U.S. Senate in January, the path to achieving health reform in the 111th Congress, *if at all*, has been filled with uncertainties – both politically and procedurally. On February 22, President Obama unveiled his own health reform proposal intended to bridge the differences between the bills passed by the Senate and House of Representative in late 2009 and to showcase the adoption of a few Republican ideas. The President's proposal was released in advance of the February 25 health care summit convened by the President to allow Democratic and Republican lawmakers to publicly discuss their policy prescriptions for health reform in the hopes of forging a compromise or two that would fuel a bipartisan health reform package.

The summit was largely civil, although there were some terse exchanges and a few pointed quips which revealed the fervent emotions that each political party

still holds about its approach to health reform. Despite the policy proposals that Republican lawmakers put forward – such as tort reform, more health care cost containment and allowing health insurers to sell insurance across state lines – the summit highlighted the role of the federal government in implementing health reform as the sharpest contrast in the philosophies of Democratic and Republican lawmakers. Republican lawmakers unanimously favored starting the health reform process anew and signaled that, if such occurred, they might support a smaller health reform package. The President made clear that resetting the process was not an option and contended that a comprehensive approach to health reform was the appropriate way to move forward.

With the President's health care summit seemingly ending in a stalemate, where are we now?

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Is Health Reform Headed to Reconciliation? (cont'd.)

It is probably safe to conclude that, at this juncture, President Obama has made a decision to move forward with health reform this year and to preferably have it done before the summer gets underway. Although President Obama has announced that Republicans would have up to six weeks to work through proposals which they would like to see in a health reform bill, neither the Senate nor the House are sitting by idly. Based upon Washington, D.C., reporting and Beltway chatter, there are at least three simultaneous paths which the Democratic leadership are following in addition to the bipartisan bill that the President is seeking.

Passing Comprehensive Health Reform Bill Through Reconciliation

There is increasing comfort and optimism among Washington D.C.'s Democratic lawmakers that, with the President's support, comprehensive health reform, based in large part on the Patient Protection and Affordable Care Act passed by the Senate on Christmas Eve, can be achieved through budget reconciliation which can be passed with only 51 votes in the Senate and shorter debate time. To accomplish this, the House of Representatives, first, would have to approve the Senate's health reform bill. The House would take this step only with the promise that the Senate would subsequently amend its bill to fix the measures which are unacceptable to House members. It is widely believed that President Obama's 11-page health care reform proposal released last week is the blueprint for the "fix-it" legislation that would make the Senate bill palatable to many House members. It is this "fix-it" legislation, and not the entire health reform package, that would be presented to the Senate as a budget reconciliation bill requiring the vote of at least 50 sitting senators plus Vice President Joe Biden who, as the President pro tempore of Senate, is permitted to break a tie.

Even though the reconciliation process is now viewed as a more politically viable option by Democratic leadership, the process is fraught with pitfalls and procedural challenges which may be difficult to overcome. House Speaker Nancy Pelosi (D-Calif.) still has to round up 216 votes (in view of House vacancies) to approve the Senate bill from a caucus in which many members remain philosophically opposed to the Senate bill because it does not contain the Stupak abortion coverage language or the public option. The Speaker's challenges mount as other House members have grown more fearful that their continued support of health reform will cost them their House seats. Moreover, many House members are distrustful of the Senate's ability to muster 51 votes for the "fix-it" legislation and it has been reported that the House may not even take a vote on the Senate health bill without a letter signed by the 51 Senators who intend to vote for the Senate "fix-it" legislation.

On the other side of Capitol Hill, Senate Majority Leader Harry Reid (D-Nev.) still must find the 50 votes which he

needs to pass the "fix-it" legislation in the Senate. Even if he does, Reid can expect his Republican colleagues to fight him on every procedural turn and challenge the inclusion of measures within the "fix-it" legislation as being outside of the purview of the budget reconciliation process. Promising his Democratic colleagues in the House of Representatives that the Senate will move on "fix-it" legislation is no guarantee that the same "fix-it" legislation promised will be approved by the Senate if the Parliamentarian ultimately is convinced that non-budget items must be removed. The House then is stuck either approving whatever the Senate can pass through the budget reconciliation process or the original Senate health reform bill which it found objectionable.

Passing a "Skinny" Health Reform Bill

Following the President's health care summit, there is greater consensus among Democrats that comprehensive reform is preferable to a more measured approach. However, there may not be the votes in Congress to achieve the comprehensive package that the President is promoting. *Congressional Quarterly Today Online News* reported after the summit that, as a fallback, the Administration is considering a "skinny" health reform package that would extend coverage to approximately 15 million Americans through the expansion of Medicaid and the Children's Health Insurance Program. This scaled-back plan is reported to cost \$240 billion over 10 years.

Passing a Series of Bills to Address Major Reform Goals

House Speaker Nancy Pelosi is following yet another path by having House members act on popular, single-issue health reform measures. On February 24, the House passed a bill to repeal the McCarran-Ferguson Act's federal antitrust exemption for health insurers by a vote of 406-19. The fate of this bill in the Senate is uncertain, but Speaker Pelosi is making the point that health reform is moving forward in the House, bill by bill. Today, *Congressional Daily* reported that the House may take up legislation that would allow Medicare to negotiate Part D prescription drug prices with manufacturers and could consider separate bills to respectively close the Medicare Part D coverage gap, allow individuals to remain on their parent's health insurance longer and eliminate pre-existing condition exclusions.

Although no one is willing to predict where we shall be, and what type of reform we might have in the next two months, it is safe to say, that for now, the push for health reform *appears* to be moving full speed ahead. President Obama officially will weigh in this Wednesday to announce in which direction he wants Congress to move.