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## Baucus Piece of the Health Care Puzzle to See Quick Review

After nearly a year-long effort to draft a bipartisan health overhaul bill, Chairman Max Baucus (D-Mont.) of the Senate Finance Committee ("SFC") formally introduced his measure last Wednesday ("America's Healthy Future Act") and immediately drew attacks from both sides of the Committee. The measure proposes the following:

- Individual mandate requiring health insurance;
- Imposes a fee on insurers who offer "Cadillac plans;"
- Expands Medicaid to low income adults;
- Does not create a Public Option;
- Establishes a \$2,000 limit for flexible spending accounts (FSA);
- Permits the purchasing of long-term care insurance through FSAs;
- Cuts payments for Medicare Advantage ("MA") plans by 3 percentage points in the update to MA benchmarks in 2011 and eventually moves to a competitive bidding framework by 2014; and
- Creates a new co-op system to compete to provide health insurance and state-based insurance exchanges.

The Congressional Budget Office ("CBO") has given the proposal a price tag of \$774 billion – the cheapest of all the other health bills to date. (See additional story below on financing estimates.) The proposal was introduced without the support of the three major Senate Finance Republicans who have been working on the bipartisan effort. Sen. Grassley (R-IA) and Sen. Enzi (R-WY) have indicated they cannot support the current proposal, while Sen. Snowe (R-ME) initially indicated she cannot support the bill in its current form but could offer her support as the legislative process moves forward.

SFC members reacted, first vocally and then by submitting amendments to the Baucus bill. Members comments included:

Sen. John Rockefeller (D-WV): *"The way it is now, there's no way I can vote for the Senate package."* Sen. Rockefeller supports a public option to compete with private insurers ("Senate Health Bill Draws Fire On Both Sides" *The New York Times*, 9/16/09)

Sen. Bill Nelson (D-FL): *"I think it would be intolerable to ask the senior citizens on Medicare who have (Medicare Advantage) to give up substantial health benefits that they're enjoying under Medicare. For hundreds of thousands of seniors who didn't conceive of Medicare Advantage but who have come to rely on it, this senator is going to offer an amendment that will shield them from those benefit cuts."* (Floor Remarks, 9/16/09)

Sen. Mike Enzi (R-WY): *"I am deeply disappointed that we could not take the time to find ways to resolve these issues. The proposal released today still spends too much, and it does too little to cut health-care costs for those with health insurance."* Sen. Enzi also is concerned about cuts to Medicare Advantage. (*Congress Daily*, 9/16/09)

Sen. Chuck Grassley (R-IA): *"Unfortunately, we are operating under an artificial deadline set by the Democratic leadership and the White House. I'm disappointed because it looks like we're being pushed aside by the Democratic leadership so the Senate can move forward on a bill that, up to this point, does not meet the shared goals for affordable, accessible health coverage that we set forth when this process began."* Sen. Grassley has indicated he is concerned about illegal immigrants gaining access to subsidies, federal funds being used for abortion and that health care costs will still be too high. He also noted that if he were to support the bill now, it could be a totally different bill after the legislative process. (*Congress Daily*, 9/15/09)

## Next Steps in the Senate – Amendments and Mark-Up

The SFC, comprised of 13 Democrats and 10 Republicans, will begin marking up the Baucus legislation (a process of introducing and voting up or down on various amendments to the underlining bill) on Tuesday, Sept. 22, and Sen. Baucus' goal is to finish the mark by the end of the week. However, more than 560 amendments were offered from Democrats and Republicans over the weekend that could significantly delay the process (the Senate HELP Committee bill took 11 legislative days to complete its version of health reform).

If the SFC is able to report out a bill, Sen. Majority Leader Reid (D-NV) will still have to wed the Finance Committee bill to the Senate HELP Committee bill before it is brought to the Senate floor. The Senate HELP Committee bill has a public option, which was one of the amendments offered to the Baucus bill. In a meeting this past Friday where Baucus discussed his bill before the Senate Democratic Caucus, a consensus appears to be emerging for a compromise position on public option, which would be a "trigger" option that would kick in if private

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## Next Steps in the Senate – Amendments and Mark-Up (cont'd.)

insurers did not meet certain expectations for coverage of the uninsured. Sen. Olympia Snowe (R-ME) indicated that she also would favor such an option, perhaps included in an amendment form.

If a combined HELP/Finance bill does make it to the Senate floor, under Senate rules it will need 60 votes to file for cloture (to end debate) and pass the bill by simple majority. There are currently 59 Senate Democrats with one Democrat seat vacant with the death of Sen. Ted Kennedy (D-MA). The Massachusetts' legislature is in the process of passing legislation to allow Governor Patrick, a Democrat, to appoint an interim Senator immediate-

ly, allowing that person to serve out the term until a special election in January. If this seat is filled before floor consideration of a health bill, the Democrats will have the needed 60 votes if the entire Caucus supports the bill.

The House Energy and Commerce Committee is expected to finalize the House Tri-Committee bill on Wednesday, Sept. 23. The Speaker, along with Ways and Means Chairman Rangel (D-NY), made it clear that the House still strongly supports a public option.

## Estimating Costs of Health Improvement Measures

Research studies find that preventative measures and better chronic disease management eventually will contain health care spending. However, cost savings from health improvement are not being used to offset the expense of various health reform bills.

The Congressional Budget Office ("CBO") is the non-partisan federal agency that estimates the cost of a health reform bill using a scorekeeping system (an economic model) to demonstrate how the legislative proposal would change federal spending or revenue levels. The Director of the CBO acknowledges that some health improvement initiatives could improve individuals' health or enhance the quality of care that they receive, but that it is unclear whether such initiatives also would reduce overall health care spending or federal costs. In its analysis of the various bills, the CBO considers the available health prevention, wellness and disease management studies, but has concluded:

- In many cases, these studies do not support claims of reductions in health care spending or budgetary savings.
- Preventative medical care does not always yield savings from expanded federal support.
- Expanded utilization of preventative services may lead to higher, not lower, medical spending.

The CBO is not charged with deciding whether proposed legislation is good or bad – only how much it costs the federal government. However, bills which yield high CBO scores – *i.e.*, add too much to federal spending without corresponding offsets – may not gain support and become targets for their critics. For instance, the Senate HELP Committee bill came under fire when the CBO estimated its cost in excess of \$1 trillion. Fifteen years ago, critics of the Clinton

health care plan seized upon the CBO conclusion that billions would be added to the long term cost of the program. To avoid such searing criticism, supporters of health reform advocate for scoreable offsets attributable to savings from prevention and disease management so that their proposals can achieve a good CBO score.

However, CBO's mandate requires that its forecasts take into account savings which can be realized only within a 10-year period. If the savings from prevention and disease management in a health reform bill are not realized within the first 10 years, the savings are not taken into account in CBO scoring of that legislation's cost to the federal government.

Policy analysts critical of CBO's scoring method for health care legislative proposals contend that that the CBO should use a longer horizon when scoring the positive impact of health improvement measures – *e.g.*, 25 years instead of 10. Dr. Michael O'Grady and his colleagues at the University of Chicago's National Opinion Research Center ("NORC") propose that the CBO use methods that would weigh savings from earlier treatment and other intervention that could help reduce costly complications from conditions that arise when left untreated or improperly treated. In considering health care legislation, NORC proposes that lawmakers look at cost estimates 25 years out. Longer term estimates also would help legislators and others estimate how having healthier, longer-living patients would effect costs.

Only further debate will determine whether better health care bills and better health outcomes are the product of better management of a health bill's CBO score or the scoring of a health bill over a longer period of time.