

Health Care Reform Key Contacts

Pat Coffey
312-443-1802
pcoffey@lockelord.com

Shane Doucet
202-220-6929
sdoucet@lockelord.com

Lisa Genecov
214-740-8418
lgenecov@lockelord.com

Denise Hanna
202-220-6992
dhanna@lockelord.com

Kevin Kroeker
213-687-6758
kkroeker@lockelord.com

Jan Newsom
214-740-8639
jnewsom@lockelord.com

Jennifer Rangel
512-305-4745
jrangel@lockelord.com

Gail Schubert
916-554-0243
gschubert@lockelord.com

Tammy Ward
512-305-4776
tward@lockelord.com

www.lockelord.com

LLB&L's Weekly Health Care Reform Update is prepared by members of Locke Lord Bissell & Liddell LLP's Health Care Reform Team. It is intended for general information purposes only and does not constitute legal advice. This information is not intended to create, and it does not create an attorney-client relationship. Readers should not act upon this information without first consulting a lawyer.

LLB&L's Weekly Health Care Reform Update is published weekly. If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive this newsletter.

Attorney Advertising

© 2009 Locke Lord Bissell & Liddell LLP

If Health Reform Passes, Which Plan Will it Be?

The Senate Finance Committee ("SFC") appears poised to approve a health reform bill later this week. If this occurs, then health reform proposals will have been passed by three committees in the House of Representatives and by two committees in the Senate. Despite this momentous progress, much debate, wrangling and compromise lie ahead as House Speaker Nancy Pelosi (D-CA) continues efforts to meld the House proposals into a single health reform bill and for Senate Majority Leader Harry Reid (D-NV) who will be in charge of this task for the two Senate proposals. Provided that Congressional leaders are successful in moving bills through each chamber of Congress, still more negotiations will be required to get a single piece of legislation through the conference between the House and the Senate. Perhaps the enormity and uncertainty of these undertakings are what prompted the White House's secret drafting of its own health reform legislation.

Although sources are divided on whether drafting of the White House legislation has been completed, the exis-

tence of a detailed White House plan has been confirmed by knowledgeable sources. Presumably, this plan was the basis for the principles articulated by President Obama during his address to a joint session of Congress on September 9. Otherwise, details of the President's health reform legislation are not being shared publicly.

How and when the White House plan might be used are more unknowns. If a Senate bill cannot garner 60 votes in a floor vote or legislation gets stuck in conference, then, perhaps the White House back-up plan or select measures of the President's plan would be used to bridge ideological divides. At this juncture, it is too early to know what approaches and proposals from the Senate, the House of Representatives or the White House would be reflected in final health reform legislation. Today's *Update* discusses the further work which the Senate and House have to do to complete their plans.

Baucus-Led Finance Committee Bill Close to Vote

The SFC has nearly completed its work finalizing Committee Chairman Max Baucus' (D-MT) legislation, including a review of more than 560 amendments and additional changes to a far-reaching health reform bill. Consideration of the formal amendments was completed late last week amid concerns that the legislation might still impose too much of a cost burden on middle-America. The SFC is expected to have a final vote on the measure this week.

Two Democratic members of the SFC are reportedly still undecided on the revised legislation, according to a *Washington Post* report. Sens. Ron Wyden (D-OR) and Jay Rockefeller (D-WV) remained uncommitted on Sunday night, with Sen. Wyden indicating that he wanted additional assurances included in the bill that would require insurance companies to keep the price of health care coverage down, making those companies accountable for lower premiums. Sen. Rockefeller last week spearheaded the vigorous debate, televised by C-SPAN, to include a government-sponsored health plan in the SFC bill. This public option was twice voted down by the panel, which retained the Baucus provisions creating non-profit insurance cooperatives. In theory, co-op premium rates would be kept low because individuals seeking health insurance would be banded together into rating pools, co-ops would have the market power to negotiate lower charges with health care providers and, because of their non-profit status, co-ops would have lower administrative expenses.

The Congressional Budget Office ("CBO") will take another look at the Baucus bill with all the revisions to determine if it meets President Obama's target health

reform cost of under \$900 billion over 10 years. The Baucus legislation was drafted with that target in mind, and close watch has been kept on amendments to help ensure that the costs remained under the Obama target. If the revised bill does not meet the financial target based on the CBO projections, it is likely that additional revisions will be made before the full Committee votes on the legislation.

Democrats hold a 13-10 majority on the SFC, so there should be enough votes to pass the Baucus legislation out of Committee, even if all 10 Republicans vote against the measure. However, a "no" vote by either Wyden or Rockefeller could cause further problems in holding the bill together in floor debate by the full Senate. Wyden has reportedly been talking with Senate Majority Leader Harry Reid (D-NV), who will be required to blend the provisions of the SFC bill with the earlier-passed Senate Health, Education, Labor and Pension ("HELP") Committee legislation prior to full Senate consideration. Additionally, Sen. Olympia Snowe (R-ME), who voted with the Democrats on the SFC on several key amendments and was a member of the Gang of Six who were attempting to offer a bipartisan-supported bill, has remained silent on her voting intentions.

Despite the steady progress made in the SFC during September and early October, the path for Leader Reid to obtain 60 votes for final Senate legislation is still somewhat uncertain.

Offices

- Atlanta
- Austin
- Chicago
- Dallas
- Houston
- London
- Los Angeles
- New Orleans
- New York
- Sacramento
- San Francisco
- Washington DC

Diversity of Democratic Interests Complicate Final House Bill

This past July, the three committees in the House of Representatives with jurisdiction over health reform measures each passed a version of the House Tri-Committee health reform bill. Despite the overwhelming Democratic majority in the House of Representatives, Speaker Pelosi still has considerable work to do before a bill is ready for a vote on the House floor. The Speaker must do the technical work of reconciling the three versions of the Tri-Committee bill and the political work of satisfying the varied interests and ideological perspectives of her diverse Democratic Caucus.

The details of the House bill which are getting significant attention include the following:

Cutting Costs - Speaker Pelosi must cut the price tag of the \$1 trillion Tri-Committee bill to within the \$900 billion target later set by President Obama during his joint address to Congress in September.

Public Option - The House bill will likely include a government-sponsored public option, although this is not yet assured. More liberal House Democrats are insisting on a robust public option which would require health care providers to contract with a public plan based on Medicare rates or some modest percentage above Medicare rates. The more fiscally conservative Democrats in the Blue Dog Coalition are adamantly opposed to government mandated rate setting with providers and likely have enough votes in the House to block passage of a health reform bill which contains such a measure. On the other hand, some, though not all, of the fiscally conservative Democrats would support a public option if the government plan were required to contract with health care providers at negotiated market rates.

The public option debate highlights two interests of concern to lawmakers, other than the ideological divisions over the role of government in our health care system. Some Democrats in the Blue Dog Coalition are from states where Medicare reimbursement rates are low compared to Medicare rates in urban centers. Representatives who vote for forcing more Medicare rates on providers in these low-reimbursement jurisdictions, arguably, do so at their own political peril. From a cost perspective, though, CBO scoring of a Medicare-based public plan would save \$110 billion while a public plan based on negotiated rates would save only \$25 billion. In an effort to move toward the center, the House Speaker is working with the CBO to close

this gap and find more savings from a public plan based on negotiated provider rates.

Employer Mandates - The House Tri-Committee bill proposes that large employers be required to offer their employees health insurance or pay a penalty. This measure is still supported by liberal House Democrats. However, moderate Democrats are wavering and likely share some of the concerns raised by Republicans that this type of measure would negatively impact smaller employers and thwart job creation or increase unemployment.

Paying for Health Reform - The House bill proposes to raise revenues to pay for reform by adding a surtax to taxpayers with incomes above a certain level - initially \$250,000 for individual taxpayers. The New Democrats - those first term Representatives who come from wealthy districts or Republican leaning districts - are generally opposed to this sort of measure and have voiced their concerns to Speaker Pelosi. In response, the House leadership is considering raising the income thresholds subject to the surtax to \$500,000 for an individual taxpayer and \$1 million for families. In addition, the House is considering, as an alternative, a tax on "Cadillac" health insurance plans similar to what the Senate bills do. This measure, however, faces fierce opposition from unions - some of the strongest constituents of the Democratic party's liberal base - whose workers have been successful in negotiating these benefits from employers. Other moderate Democrats in the House have rejected both the income tax surtax and the taxing of Cadillac health plans and are insisting that health reform be paid for solely from savings realized from cuts in Medicare.

In view of these and other open issues, last Thursday, Majority Leader, Steny Hoyer (D-MD), indicated that a floor vote on a House bill would not occur within the next two weeks. Although the Democratic leadership in the House does not expect a single Republican vote in favor of final health reform legislation, it does have to manage the number of Democrats who, for whatever reason, may defect. The House can lose the votes of up to 39 Democratic Representatives and still pass health reform legislation with a straight party vote. However, finding the right combination of measures to secure 218 votes may be more challenging than the Speaker is letting on.

Behind the Scenes

The *Los Angeles Times* reports today that, despite "months of outward ambivalence" about a government-run public option, the White House "has launched a behind-the-scenes campaign" to get Senate Democrats "to take up some version of the idea for a final vote." During this past week, Director of the White House Office of Health Reform, Nancy-Ann DeParle, aides to Senate Majority Leader

Harry Reid, and staff from the SFC and HELP committees have been meeting privately on a regular basis. President Obama also is personally calling Democratic Senators to solicit their support. These efforts may be evidence that the liberal base of the Democratic party have not yielded their influence to that of more moderate and fiscally conservative Democrats.