

Washington Business Health Update

From the National Business Group on Health

Vol. XX, No. 2 January 29, 2010

IN THIS ISSUE:

- **PRESIDENT URGES CONGRESS TO SALVAGE HEALTH CARE BILL BUT LOWERS ITS PRIORITY IN STATE OF THE UNION ADDRESS**
 - **32 DEMOCRATIC SENATORS URGE EXTENSION OF COBRA SUBSIDIES THROUGH DECEMBER 2010**
 - **HOUSE COMMITTEE PASSES BILL REQUIRING DISCLOSURE OF WHITE HOUSE'S HEALTH CARE DEALS**
 - **SENATE PLANS TO VOTE ON MEDICARE PHYSICIAN PAYMENT "FIX"**
-
- **PRESIDENT URGES CONGRESS TO SALVAGE HEALTH CARE BILL BUT LOWERS ITS PRIORITY IN STATE OF THE UNION ADDRESS**

On Wednesday, President Obama's State of the Union address urged Congress not to "walk away from reform" and to take another look at the health care bills passed by the House and Senate last year, but he did not provide either a roadmap or a timetable for getting it done. Furthermore, he put jobs and the economy, a financial regulation overhaul and climate change as priorities ahead of health care legislation. Since the Massachusetts' Senate election gave Republicans the opportunity to block the legislation, it looks increasingly likely that Congress may not pass any substantial health care changes this year.

The President stated that he is open to alternatives on how to "reform" health care as long as they would reduce premiums, bring down the deficit, cover the uninsured, strengthen Medicare for seniors, allow small businesses and the uninsured to choose affordable health care plans in a competitive market, require every insurance plan to cover preventive care and ban pre-existing conditions exclusion clauses. The President also announced that the First Lady would lead a national movement to reduce childhood obesity.

The two remaining routes to get comprehensive legislation on President Obama's desk, neither of which are easy, are:

1. The House passes the Senate-passed bill and then simultaneously passes a corrections bill that would incorporate House Speaker Nancy Pelosi's (D-CA) preferences easing the tax on higher cost insurance plans and exempting unions and government employees from the so-called "Cadillac" tax until 2018; closing the Medicare prescription coverage gap; and extending to all states the federal commitment to pay for Medicaid expansion deals that Nebraska and Louisiana received at a cost of \$300 billion over 10 years. Congress could pass the corrections bill through an expedited process known as reconciliation. This

approach only requires 51 votes in the Senate. House Speaker Pelosi, who promised to deliver a health care bill, is working to obtain a commitment from the Senate on this approach. However, she may not have the votes as many House members, including Ways and Means Committee Chair Charles Rangel (D-NY), object to the Senate-passed bill for various reasons. The House is also pushing to include a national insurance exchange; however, it is unclear whether the exchange could be considered under the budget reconciliation process because it would not directly affect the federal budget.

2. The House may pass individual bills such as applying federal anti-trust laws to health insurers or a smaller, separate package with many of the popular elements of the larger health care bills even as Speaker Pelosi continues working with the White House and the Senate to move comprehensive legislation. The popular provisions that have broad support among Democrats include insurance market reforms, modest expansions of coverage, small business tax credits, and some Medicare delivery changes along with closing part of the Medicare prescription drug benefit “donut hole” for seniors and maybe even some limited medical liability reforms.

Senate Majority Leader Harry Reid (D-NV) could have difficulty securing the votes to pass a corrections bill as moderate Senators Blanche Lincoln (D-AR) and Evan Bayh (D-IN) have already come out against it, 6 others have expressed concern, and Senator Ben Nelson (D-NE) has vowed to vote against a bill with a national insurance exchange. Though bipartisan talks continue, they are long shots at this point. Independent Senator Joe Lieberman (I-CT) is meeting with Senator Susan Collins (R-ME) and Senators Lincoln, Bill Nelson (D-FL) and Max Baucus (D-MT) have approached Senator Olympia Snowe (R-ME) within the past week to discuss a potential compromise on a scaled down version of the bill.

IMPACT ON EMPLOYERS: The current health care bills could cost employer plans, people in them, and other private coverage between \$400-600 billion over the next 10 years. We continue to believe that real “reform” requires simultaneously controlling costs (which some of the Medicare reforms would begin to do on a small scale and could do on a larger scale if widely adopted throughout the program), improving quality and expanding coverage.

IMPACT ON EMPLOYEES: The current health care bills could cost employer plans, people in them, and other private coverage between \$400-600 billion over the next 10 years. Some lower-income employees, employees with no coverage or coverage that does not meet the comprehensiveness or affordability criteria and the uninsured would be able to purchase subsidized health insurance coverage in new insurance exchanges financed by a variety of taxes on current policyholders.

OUTLOOK: *Unclear at this point but Congress will likely pass something.*

BACKGROUND: The Senate passed its version of the health care bill on Christmas Eve and the House passed its version in November 2009.

NATIONAL BUSINESS GROUP ON HEALTH VIEW AND RECENT ACTIONS: The Business Group believes that we must address coverage expansion, controlling costs and improving quality simultaneously.

Link to the Business Group's Health Reform Proposal Comparison Chart:

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=2418>

➤ **32 DEMOCRATIC SENATORS URGE EXTENSION OF COBRA SUBSIDIES THROUGH DECEMBER 2010**

This week, 32 Democratic senators, led by Senator Robert Casey (D-PA), urged Senate Majority Leader Harry Reid (D-NV) and Finance Committee Chair Max Baucus (D-MT) to extend unemployment benefits and the eligibility period for COBRA subsidies from the current February 28, 2010 end-date to December 31, 2010. The letter also requests an extension of the current suspension of federal income taxes on people's first \$2,400 of unemployment benefits from February until the end of the year.

The House already passed a "jobs" spending bill with COBRA provisions that would extend the eligibility period for the COBRA premium subsidy to employees who lose their jobs through June 30, 2010 and allow people who did not elect COBRA coverage due to a reduction in work hours to use that reduction as a qualifying event for the COBRA subsidies (currently only involuntary terminations qualify).

The Senate may include an extension of the eligibility for COBRA subsidies and an additional proposal from Senator Casey to increase the subsidies to 75% in its version of the "jobs" bill that would also include a new tax credit for smaller employers that hire unemployed workers in the next few weeks.

Link to the Business Group's January 14, 2010 Public Policy Alert "Department of Labor Releases New COBRA Model Notices":

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=2652>

IMPACT ON EMPLOYERS: Extending temporary federal COBRA subsidies would increase employers' health plan expenses and administrative burden. Indefinite COBRA eligibility makes it less attractive for employers to offer health care benefits and more expensive for employers and employees knowing they might both be stuck with an indefinite liability for former employees' health care costs.

IMPACT ON EMPLOYEES: Extending temporary federal COBRA subsidies will lower former employees' costs to temporarily continue their employer-sponsored health coverage. Employees and current employer plan participants would face significant cost increases to subsidize COBRA coverage when COBRA premiums do not fully cover the health care costs of former employees and their dependents.

OUTLOOK: *The Senate will likely extend the COBRA subsidies in the "jobs" bill or a separate bill in the next few weeks. The House will likely pass the COBRA extension passed by the Senate.*

BACKGROUND: The American Recovery and Reinvestment Act (ARRA) or stimulus bill made federal COBRA subsidies available to people involuntarily unemployed and

eligible for COBRA at any time between September 1, 2008 and December 31, 2009. The recent Defense Appropriations law extended the qualification period for the COBRA subsidies through February 28, 2010 and allows qualified beneficiaries to receive the subsidies for an additional 6 months (maximum). The federal government pays 65% of premiums for 9 months, paid to employers through payroll tax offsets. The House-passed health “reform” bill also includes a provision that would extend COBRA indefinitely from the current 18-month window until people become eligible for other employers’ coverage or through the exchanges but not extend or expand federal subsidies.

NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THIS ISSUE: The Business Group believes that COBRA plays an important role in providing temporary health care coverage to former employees, however, unlimited COBRA makes it less attractive for employers to offer health care benefits and significantly increases employers’ and employees’ costs.

➤ **HOUSE COMMITTEE PASSES BILL REQUIRING DISCLOSURE OF WHITE HOUSE’S HEALTH CARE DEALS**

This week, the House Energy and Commerce Committee approved a bill by Representative Michael Burgess (R-TX) requesting that the Obama administration and health care trade associations representing medical device manufacturers, doctors, hospitals, insurers, prescription drug companies and labor unions turn over documentation related to the deals the White House struck with them over the current health care bills before the Congress.

The White House would have to comply within 14 days in the unlikely event the House adopts the Burgess resolution. However, the White House could also claim Executive Privilege to prevent the release of this information to the public. Bills requesting information from the White House do not need approval by both the House and Senate.

The public and Republicans have criticized the White House and Democratic leadership for striking “backroom deals” with interest groups and individual lawmakers, such as the deal to secure the vote of Senator Ben Nelson (D-NE) with a federal commitment to pay for Medicaid expansion in Nebraska or the union exemption from the Senate bill’s excise tax on higher cost health care plans.

Chairman Waxman agreed to consider Representative Burgess’ bill hours before President Obama’s first State of the Union address and to draft an additional request letter to the President. Waxman opposes the White House agreement with pharmaceutical companies to pay \$80 billion over 10 years and reduce the price of drugs for seniors in Medicare in exchange for concessions. Hospital groups made a similar arrangement to pay \$155 billion over 10 years and physicians conditioned their support for the health bills based on guaranteed increases in their Medicare payments.

IMPACT ON EMPLOYERS: Publicly disclosing information about the agreements with health care trade associations and labor unions in the current health care bills could provide information to the public and other stakeholders, including employers, of potential provisions that could affect their health care costs

IMPACT ON EMPLOYEES: Increased transparency about the agreements with health care trade associations and labor unions in the current health care bills would make it easier for employees to understand how the legislation would affect them.

OUTLOOK: *The House will not approve Representative Burgess' transparency bill. The Senate has not introduced a similar bill.*

BACKGROUND: The pharmaceutical companies, hospitals, medical device companies, insurers, doctors and certain unions reportedly made agreements with the White House to contain government health care costs by as much as \$2 trillion over 10 years in exchange for favorable concessions last May and President Obama held a press event to promote the agreements. President Obama recently held a number of day-long negotiations with the unions to reach an agreement over the Senate health care bill's tax on higher cost health care plans.

NATIONAL BUSINESS GROUP ON HEALTH VIEW: We believe that all relevant information connected to the health care legislation and negotiations should be disclosed publicly.

➤ **SENATE PLANS TO VOTE ON MEDICARE PHYSICIAN PAYMENT "FIX"**

This week, Senate Majority Leader Harry Reid (D-NV) agreed to consider a House-passed bill by Representative John Dingell (D-MI) to stave off a scheduled 21% cut in Medicare physician rates set for 2010 at a cost of \$210 billion over 10 years. The Senate also approved an amendment to a separate bill increasing the federal debt limit that would exempt the Medicare physician payment "fix" for 5 years from a pay-as-you go requirement. The pay-as-you go requirement means that Congress would have to include spending cuts or new taxes to offset the increased Medicare spending.

The Senate is likely to oppose the House-passed "fix", which does not have the pay-as-you go requirement. Last year, they opposed a Senate bill that would have eliminated the annual Medicare physician payment cuts at a cost of \$247 billion over 10 years. Senator Scott Brown's (R-MA) election in Massachusetts only further increases the chances that without associated revenues unpaid legislation will not pass the Senate.

IMPACT ON EMPLOYERS: Avoiding Medicare physician reimbursement cuts will reduce the pressure for physicians to shift costs to employer and other private payers to make up for the shortfall but exacerbates the long-term threat to Medicare's fiscal unsustainability and the threat of higher Medicare payroll taxes. Primary care physicians are especially hurt since their payment levels are already so low. It also points out the politically unrealistic promise to cut \$500 billion in Medicare to pay for coverage expansion in the House and Senate health care bills. Medicare should quickly move away from fee-for-service to physician payment based on performance to improve the effectiveness of care delivery and the program's fiscal sustainability.

IMPACT ON EMPLOYEES: As the government reduces the pressure for physicians to shift costs to the private sector, employees avoid paying more in out-of-pocket costs but increase their risk for Medicare payroll tax increases. As Medicare delays improving the way it pays for health care, employees do not reap the benefits of a more effective and

efficient health care system. Retirees will pay higher Part B premiums as Congress restores Medicare physician payment cuts.

OUTLOOK: While the House passed its Medicare doctor payment “fix”, last year’s failure in the Senate will likely lead to a one or two year patch.

BACKGROUND: Congress, with the exception of 2002, has passed legislation each year to either freeze or reduce the amount of the Medicare physician payment cuts that Clinton-era 1997 budget legislation required if Medicare expenditures increased too much.

NATIONAL BUSINESS GROUP ON HEALTH VIEW: The Business Group supports comprehensive physician payment reform and believes Congress needs to tie physician reimbursements to performance on quality and safety in any reform of Medicare’s physician payment system and with any restoration of planned reimbursement cuts.

If you would like more details on these or other issues or would like a phone briefing on legislation, or want to express concerns about specific issues, please contact Steven Wojcik, Vice President, Public Policy at wojcik@businessgrouphealth.org or 202-585-1812. **Also, as part of our “Ask a Benefits Question” service, we are happy to respond within 24 hours to any health benefits question on policy, regulations or legislation.**

This material is provided for information purposes only and is not a substitute for legal advice.

Steven Wojcik
Vice President, Public Policy
National Business Group on Health
202-585-1812
wojcik@businessgrouphealth.org

Michael Baxter
Policy Analyst, Public Policy
National Business Group on Health
202-585-1813
baxter@businessgrouphealth.org