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PRESIDENT'S SUMMIT HIGHLIGHTS PARTY DIFFERENCES ON SOLUTIONS

Last Thursday, President Obama led a meeting with congressional leaders on the issues of health care cost, insurance market reform, deficit reduction and coverage expansion in an attempt to gather enough support to salvage passage of a health care bill. Senator Lamar Alexander (R-TN) and other Republicans expressed support for health savings accounts, medical liability reforms, allowing insurance companies to sell coverage across state lines and renewed their calls to start over and scrap the current bills, while the President and Democratic congressional leaders restated their support for their health care bills and their willingness to use the "reconciliation" short cut in the Senate to push a bill through with 51 votes and no need for Republican support.

The President used a summary of his proposal for an approximately $950 billion bill to expand Medicaid and offer low-income tax credits to cover 31 million uninsured Americans as the basis for the discussion. The President's bill makes changes to the Senate-passed health care bill but does not provide the actual text of a bill or a number of important details—including those that would affect employers—or an official cost estimate from the Congressional Budget Office (CBO).

House Speaker Nancy Pelosi (D-CA) stated that House Democrats could support the President's bill which moved much closer to the House's position on expanding low-income tax credits; incorporating the union modifications to ease the tax on higher cost or "Cadillac" insurance plans and delaying implementation 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.

Senate Majority Leader Harry Reid (D-NV) may send the House a revised bill incorporating the President's changes along with a letter signed by 51 Senators promising to pass a revised bill using the "reconciliation" short cut.

The President's proposal would change the Senate-passed bill by:

- **Modifying the Employer Free Rider Assessment (Partial Mandate):** Would charge employers with more than 50 employees who do not offer coverage comprehensive enough to meet governmental standards for each full-time employee qualifying for federal tax credits for exchange coverage $3,000 instead of $750 and $2,000 per full-time employee for employers who do not offer coverage—the first 30 workers would be exempt from the calculation.
- **Increasing the "Cadillac" Tax Thresholds:** Would include the union modifications to raise the thresholds for the 40% excise tax on the aggregate value of employer-sponsored health coverage, beginning in 2018, from $8,500 to $10,200 for individuals and from $23,000 to $27,500 for family coverage, indexed annually to general inflation, not medical inflation, plus 1%. The proposal would still adjust the thresholds higher if insurance costs grow faster than expected, for certain high-risk occupations, firms whose health costs are higher due to the age and gender of their employees, and would not count dental and vision benefits as taxable.
- **Limiting Waiting Periods to 90 days:** Would remove the earlier penalty for employers with health care coverage waiting periods of more than 60 days, but would limit waiting periods to 90 days.
- **Delaying Taxing Employers' Retiree Drug Subsidy (RDS):** Would delay prohibiting employers with retiree prescription drug plans from excluding the Medicare Retiree Drug Subsidy (RDS) from gross incomes for corporate income tax purposes until 2012.
- **Applying Insurance Reforms to Employer-Sponsored Plans:** Would require employer-sponsored plans to cover dependents up to age 26 on their parents' plans; prohibit dropping coverage and require all plans to implement internal appeals processes for coverage determinations and claims—self-insured plans would have to use an external review process established or approved by the HHS Secretary. After state-based exchanges start in 2014, it would prohibit annual and lifetime limits, ban pre-existing condition exclusions (medical history, genetic information or evidence of domestic violence) and prohibit setting different premiums based on gender, salary or age. In 2018, it would require all plans to cover proven preventive services with no cost sharing.
- **Delaying Insurers' Fees:** Would delay implementation of a $67 billion assessment on health insurers over 10 years until 2014. The fee would begin at $2 billion annually in 2014, increase to $4 billion in 2015, $7 billion in 2016, $9 billion for years 2017 through 2018 and $10 billion for years after 2018.
- **Increasing Pharmaceutical Companies' Fees:** Would increase the total amount collected from an annual fee on pharmaceutical manufacturing based on market share, beginning in 2011, from $23 billion to $33 billion over 10 years.
- **Creating a New Federal Board to Evaluate Individual Market Premium Increases:** Would establish a new seven-member federal Health Insurance Rate Authority to help States determine if a rate increase is unreasonable and

unjustified and could require health insurers to lower premiums, provide rebates, or take other actions to make premiums affordable.

- **Changing Requirements for Medicare Advantage Cuts:** Would replace the proposals establishing competitive bidding and lowering payments to local fee-for-service rates with a set of benchmark payments for quality and enrollee satisfaction set at different percentages of the current average fee-for-service costs in an area. It would also revise and implement risk-adjustment for payment purposes.
- **Modifying a New Voluntary Retirement Program:** While the plan offers no specifics, it would make a series of changes to improve the financial stability of a new national voluntary disability benefit program that employers would automatically enroll employees in (employees could opt-out) and the federal government would deduct premiums ($65 per month, possibly more, or as little as $5 for low-incomes) from employees' paychecks that would pay $50 per day after year 5 to purchase nonmedical services and support independence at home or in community residential settings.
- **Lowering the Individual Coverage Mandate Penalty:** Would decrease the penalty for not acquiring coverage from $495 to $325 in 2015 and from $750 to $695 in 2016, or up to 2.5% of income.
- **Closing the "Doughnut" Hole in Medicare Part D Coverage:** Would offer a $250 rebate to Medicare beneficiaries who hit the doughnut hole in 2010 and completely phase it out by 2020 so that coinsurance is the standard 25% throughout the coverage gap.
- **Ending Pay-to-Delay Generic Drug Agreements:** Would allow the Federal Trade Commission (FTC) to prohibit settlement agreements in which brand-name drug companies pay generic competitors to stay out of the market.

Link to the Business Group's Updated Health Care Bill Comparison Chart Containing Additional Details from the President's "Health Summit" proposal:

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

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: Democratic leaders may move forward with the "reconciliation" short cut soon. If they can not pass a comprehensive bill, Democratic leaders may still pass a few of the more popular elements including 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 "doughnut" hole for seniors by June.

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, while controlling costs and improving quality simultaneously.

➢ SENATE MAY PASS A 1-MONTH EXTENSION, EXPANSION OF ELIGIBILITY FOR COBRA SUBSIDIES AND DELAY MEDICARE PHYSICIAN PAYMENT CUTS

Last week, Senator Jim Bunning (R-KY) temporarily delayed passage of a House-passed bill that would extend a number of expiring tax provisions, extend eligibility for federal COBRA subsidies by 1-month, unemployment benefits until April 5, and a retroactive fix to temporarily delay Medicare physician payment cuts taking effect today until March 31. The bill would also expand eligibility for COBRA subsidies to people who faced a reduction in work hours and lost their health care benefits (currently only involuntary terminations qualify). Senator Bunning insists that Congress pay for the extensions bill, but Senate Minority Whip John Kyl (R-AZ) indicated that Senator Bunning may drop his opposition to temporarily renew these very popular provisions that expired on February 28th.

The 1-month extension would buy time while Democratic leaders develop a second, "jobs" bill that would likely include a longer 1-year extension of unemployment benefits and the COBRA subsidies and a longer term solution to the 21% Medicare physician payment cuts. Senate Majority Leader Harry Reid (D-NV) indicated that he may move directly to the 1-year extension if Senator Bunning continues to oppose the 1-month measure. Senator Reid recently stripped an extension of the expiring tax provisions, a 3-month extension of eligibility for the federal COBRA subsides, and a postponement of scheduled cuts to Medicare physician payments until October from an earlier bipartisan draft of the "jobs" bill in favor of a smaller package that removed all of the provisions not directly related to job creation.

Newly elected Senator Scott Brown (R-MA) joined with Democrats to pass the smaller "jobs" bill. The bill would allow companies to avoid paying Social Security taxes for the remainder of 2010 on new hires who have been unemployed for at least 60 days. Employers would also receive a $1,000 tax credit for each new worker who stays on the job for at least a year. The House has yet to pass the smaller "jobs" bill over a dispute regarding transportation funding for the states.

Link to the National Business Group on Health's letter to Senate Majority Leader Reid urging the Senate to use the recent removal of the provisions to extend the

COBRA subsidies and Medicare physician reimbursements from the Senate "jobs" bill as an opportunity in future bills to reduce the costs and administrative burden of COBRA coverage and to tie pay-for-performance to any restoration of planned Medicare physician reimbursement cuts:

http://www.businessgrouphealth.org/pdfs/21910%20Letter%20to%20Senator%20Reid%20on%20Minimizing%20COBRA%20Costs%20and%20Tying%20Medicare%20Physician%20Reimbursements%20to%20P4P.pdf

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. Even with a subsidy, those who select COBRA will be higher users of health care so they will still cost employers considerably more than they pay in contributions.

Avoiding Medicare physician reimbursement cuts would 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.

IMPACT ON EMPLOYEES: Extending temporary federal COBRA subsidies would lower former employees' costs to temporarily continue their employer-sponsored health coverage. Current employees in health plans and their families would face significant cost increases to subsidize COBRA coverage because COBRA premiums do not fully cover the health care costs of former employees and their dependents.

If the government reduces the pressure for physicians to shift costs to the private sector, employees would avoid paying more in out-of-pocket costs but increase their risk for Medicare payroll tax increases.

OUTLOOK: The Senate and the House will likely pass both a short and longer extension and expansion of federal COBRA subsidies and delay the cuts to Medicare physician reimbursements. The President will sign these extensions into law.

BACKGROUND: The COBRA provision removed from the Senate "jobs" bill would have extended the initial eligibility period for the 65% federal COBRA premium subsides for 3 months from the current February 28, 2010 end-date until May 31, 2010. In addition, the original draft Senate "jobs" bill also would have allowed people who faced a reduction in work hours and lost their health benefits to qualify for federal COBRA subsidies (currently only involuntary terminations qualify) and staved off Medicare physician payment cuts, set to begin March 1st, for 7 months until October 1, 2010.

The House passed a larger "jobs" bill than the Senate in December 2009 that would have extended the eligibility period for the 15-month COBRA premium subsidies to employees who lose their jobs through June 30, 2010 from the current February 28, 2010 end date; 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); and impose a $110 per day fine on plans that do not comply within 10 days of COBRA eligibility determinations made by the HHS Secretary.

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 (15 months maximum). The federal government pays 65% of premiums, 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 in 2013 but not extend or expand federal subsidies.

While Medicare physicians prefer a permanent solution to the scheduled cuts to their payments, they could support an extension of current payment rates to give Congress time to act on the issue. Congress exempted the Medicare physician payment “fix” from the new pay-as-you-go law for 5 years. 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 ON THESE ISSUES: 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.

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.

➢ HOUSE PASSES A BILL TO REGULATE INSURERS AT THE FEDERAL LEVEL

Last week, by an almost unanimous vote, the House passed a bill by Representative Tom Perriello (D-VA) that would allow the federal government to prosecute insurers for violations of antitrust law. Current law delegates this function to the states but does not bar the federal government from regulating the insurance industry entirely. The Congressional Budget Office (CBO) estimated that repealing the antitrust exemption for health insurers "would have no significant effects on either the federal budget or the premiums that private insurers charged for health insurance." A new report from California also suggests that the real issue is market power by hospitals and physicians in many places, which then drives up health care and insurance costs.

Democrats defeated an amendment offered by Representative Dan Lundgren (R-CA) that would have allowed all insurers to pool together to collect historical pricing data. A

January Congressional Research Service report found that small insurance companies rely on data collected and shared by larger competitors to set their rates, a practice that would be prohibited under the bill.

House Speaker Nancy Pelosi (D-CA) stated that the antitrust bill is the beginning of a series of smaller health insurance reform bills, including allowing people to stay on their parents' insurance until their mid-20s, guaranteeing people do not lose their health insurance if they lose their job, stopping insurers from dropping coverage, banning pre-existing condition exclusions and allowing Medicare to negotiate prescription drug prices, but are not intended as a substitute for a larger, comprehensive health care bill.

IMPACT ON EMPLOYERS: The antitrust bill would have little impact on ERISA plans already governed by the federal Department of Labor, but it would increase federal regulation of insured plans in addition to state regulation and could increase administrative bureaucracy and costs. The change could further increase the market power to physicians, hospitals and other health care providers, which could lead to higher costs for employers and insurers.

IMPACT ON EMPLOYEES: Employees may face higher premium costs.

OUTLOOK: Senate Majority Leader Reid has supported the antitrust bill in the past and has promised to support its passage in the Senate. Republican Senators will try to stop the antitrust bill, but it is unlikely due to the almost unanimous vote in the House. President Obama strongly supports the bill and plans to sign it into law.

BACKGROUND: The House-passed health care bill included a provision applying federal anti-trust laws to all health insurers and the House Judiciary Committee passed a similar bill last year that did not include an exemption for the information gathering and rate setting activities of State Insurance Commissions. The American Academy of Actuaries sent a letter to the House and Senate leadership opposing the House-passed health care bill precisely because this provision would limit these activities. The Senate-passed health care bill does not include the anti-trust provision.

NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THIS ISSUE: The Business Group supports policies that minimize the regulatory burden on the insurance industry to facilitate ease of entry, increase affordability, and promote market competition and efficiency in individual and small group markets while also guaranteeing consumer protections.

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.

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