Health Reform Outlook
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Presented by:
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Introduction

• Legislating health care reform in 2009 is the major priority of the Obama administration and the Democratic Congress.

• Partisan movement in both the House and Senate recently slowed by cost projections and Majority

• Majority divisions over issues like rural hospital payments, abortion and the public plan.

• No House Republican support.

• One potential Republican Senate vote.

• Legislation is Fluid; changing constantly.
Bill Variations

• This will cause confusion.

• We have five different variations of health reform bills: two Senate, and three House bills.
  – The Senate HELP and Finance bills will need to be combined by the Majority Leader, Committee Chairs, others.
  – The House bills will be combined by the House Rules Committee.
Very Broad Overview

- The initial goal was committee passage by the July 4th recess and passage by House and Senate by the August recess.
- Three House committees with responsibility over health care marked up and passed HR 3200 in July.
- Senate HELP committee passed its bill out of committee in July.
- Senate Finance Committee passed its bill yesterday.

Flow Chart for H.R. 3200
H.R. 3200

• Contains a public plan option, individual mandate, employer mandate, national exchange, strict market reforms, significant ERISA implications, Medicaid expansion to 133% FPL, exchange-based subsidies to 400% FPL an essential benefit package and more.

• Three versions of the bill still have to be “married” together by the progressive-dominated Rules Committee.

The $1.3 trillion bill would be financed primarily by Medicare cuts and a $544 billion surtax on the adjusted gross income of upper-income Americans.
The Senate HELP Committee passed their version of the bill after a two-week mark-up on July 15.

Includes public plan, employer mandate, individual mandate, state-based gateways, minimum benefit standards, market reforms, subsidies, CLASS Act and more.

The bill passed 14-11, along party lines. Legislation is still troubling but vastly improved from the initial bill.

Senator Tom Harkin (IA), a longtime wellness advocate, took the helm of the Committee following the passing of Senator Ted Kennedy.

This is regarded by some as the Kennedy Legacy.
Senate Finance Committee

- Finance Committee Chairman Max Baucus (D-MT) worked with the GOP, but eventually introduced it without any GOP sponsorship.

- Bill passed committee 14-9.

- Bill includes an individual mandate, less restrictive market reforms, state-based exchanges, Medicaid expansion to 133% FPL, exchange-based subsidies to 400% FPL, interstate insurance compacts, co-ops rather than a public plan.

- CBO Estimate = $829 Billion
  - Estimate could change “significantly” once bill written as legislation
  - Does not include over $250 Billion Medicare doctor payment formula fix.

Financing includes a 40% excise tax on policies above $8k single/$21K family and a new $6.7 billion national tax on insurers.
Limit Employer Tax Exclusion

- Organized labor very opposed to this.

- 40% tax applicable on cumulative value of employer-sponsored plans exceeding $8K/individual and $21K/family

- Includes health insurance premiums, HSAs, FSAs, HRAs, dental and vision

- Hypothetical: $4,000 premium, $2,000 HSA, $2,500 FSA, $500 dental ($9K total)

- Tax liability: $1,000 * .4 = $400

- Senate Finance bill has some relief for high-cost states, but details are vague
White House Plan

- Key promises:
  - Illegal aliens would not be covered
  - No public financing of abortions
  - If you like your plan you can keep it
  - Existing coverage will not change, just become better and less expensive
  - Public option, if there is one, will be limited to small employers and uninsured individuals
  - Bill will not increase federal deficit by one penny
  - Bill will cost about $900 billion and be financed mostly through administrative savings and cuts to waste, fraud and abuse in the current system
"If the bill fails it will be because of disagreement among the Democrats."

- House Minority Whip,
  Rep. Eric Cantor (R-VA)
Senate Democrats—Plan B?

- The filibuster makes passing Senate bills more difficult.

- Senate Democrats have threatened to pass legislation outside of regular order.

- Use of the Budget Reconciliation process to pass health reform is their big stick.

- There are many reasons why Senate leaders would prefer a bipartisan bill.
Budget Reconciliation Primer

• Because of provisions in the budget resolution passed earlier this year, the Senate could activate the reconciliation process if a bill has not passed by October 15.

• Why do it?
  – Debate would be limited to 20 hours
  – Final legislation would only need 51 votes for passage.

• Why not?
  – Reconciliation measures are permitted to include only provisions that affect the federal budget.
  – A Senator can request line-by-line reading of the 1,000 bill and challenge any provision, requiring a ruling by the parliamentarian and 60 votes to overturn a parliamentarian ruling.
Budget Reconciliation Primer

• Why not (cont)?

  – Reconciliation also would require the measure to reduce to not add to the federal deficit over five years—a requirement few believe could be met.

  – The resulting bill would end up looking like “Swiss cheese,” said Senate Finance Committee Chairman Max Baucus (D-MT).

  – Senate Budget Committee Chairman Kent Conrad (D-ND), said it would lead to “dramatically reduced coverage... or much increased taxes.”
What’s in the Legislation

Keep in mind that the details are going to change.
The Gateway (Senate HELP) or Exchange (Senate Finance)

- Mechanisms that facilitate purchase of health insurance coverage that satisfies requirements for affordability and quality

- Key issue: State vs. Federal/ How regulatory?

- Senate HELP = Gateway (State Based; differs from House Version)

- Senate Finance = Exchange (State Based)
  - Governed by the Secretary of HHS, who works with the National Association of Insurance Commissioners ("NAIC") to establish the federal requirements
  - Available to "Qualified Individuals" who are not eligible for other coverage
  - Federal Credits for up to 400% FPL
  - Standardized plans must be approved for sale
    - Gold, Silver, Bronze
    - Senate Finance includes a Platinum plan, too
Gateway/Exchange

- **House Bill** = Exchange
  - **Federally-based**
  - Governed by "Health Choices Administration," a new, independent Federal agency
  - All individuals are eligible unless they are enrolled in a "qualified health benefits plan" or other "acceptable coverage"
  - Federal Credits for up to 400% of FPL
  - Plans must meet the requirements to be a "Qualified Health Benefits Plan"
What’s An Exchange and What Will it Do?

• Modeled after 2006 Massachusetts law; every proposal creates an exchange for individuals / small employers to shop and compare private plans.

• The House bill would establish one national exchange, while the Senate HELP and Finance bills establishes separate exchanges at the state level.

• Bricks and mortar exchange (Mass. model) or a virtual exchange that directs people to licensed agents (Utah model)?

• The Exchange would verify income eligibility for public and publicly-subsidized programs and could be a vehicle for subsidies (or contract with a vendor to do that).
Individual Mandate

- Internal Revenue Code sec. 59B: individuals who do not participate in coverage that satisfies the minimum requirements must pay additional taxes, with certain exceptions:
  - Senate HELP: The penalty may not be less than 50 percent of the average annual premium under the "basic plan" for the preceding calendar year
  - House Bill: Tax 2.5% of the excess of the taxpayer’s modified adjusted gross income
  - Senate Finance: Excise tax of up to $750 per adult per household. Phased in from 2013-2017.
  - Key issue – is the individual mandate strong enough?
Insurance Market Reforms

Insured Benefits

• Guaranteed Issue / Renewability
  – Applies in large group market, as well as individual and small group markets (House Version).

• Rating Limits
  – Insurers only may vary premium based on age (subject to maximum ratio of 2:1 (house and Senate HELP)), geographic area, and family structure. Senate Finance: age ratio 4:1
  – Very restrictive rating: could increase cost for individual and group insurance.
  – House – Rating limits apply to individual, small, and large group markets.
  – Senate – Limits to individual and small group markets, also allows rating based on tobacco use.
Insurance Market Reforms

**Insured & Self-Funded Benefits**

- No Pre-Existing Condition Exclusions
- No Annual or Lifetime Limits
- Must Cover Dependents to Age 26 (Senate HELP)
Insurance Market Reforms

Insured & Self-Funded Benefits

- Prompt pay rules similar to Medicare Advantage (House only)

- Must provide incentives for case management, care coordination, hospital discharge planning, evidence-based medicine, child health measures, and culturally and linguistically appropriate care. (Senate HELP only)

- Must provide COBRA until individual becomes eligible for other employment-based coverage or becomes eligible for Exchange, whichever is earlier. (House only, Ed & Labor amendment)
Insurance Market Reforms

Insured & Self-Funded Benefits

• Applicable if Health Choices Commissioner determines (already applicable to Exchange plans)

• House only -
  – External review standards for independent review, which will be binding on plans
  – Additional disclosure requirements (claims payment policies and amounts, enrollment data, cost-sharing, and reimbursement arrangements).
  – Must provide advance notice of plan changes
"Essential" Benefits – Set By the Government

**Insured & Self-Funded Benefits**

- Preventive care and immunizations without cost-sharing

- Extension of mental health parity to individual and small group markets.

- Cost-Sharing Limits
  - House: Limited to $5,000 individual / $10,000 family and must be limited to 30% of actuarial value of benefit.
  
  - Senate HELP: Limited to high deductible plans only and must be limited to 24% of actuarial value of benefits (applies to Gateway plans only).
  
  - Senate Finance: Out of Pocket expenses limited to the HSA out of pocket maximum. For 2010, these limits are $5,950/individual and $11,900/family.
# Essential Benefits - Comparison

## Applies to Insured & Self-Funded

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*House Bills apply to both fully insured and self insured plans.*  
*Both Senate Bills apply to fully insured plans only.*
Grandfathered Group Plans

- **House**
  - Existing employment-based group plans grandfathered for 5 years, starting 1/1/13. **After 5 years, everyone must purchase through exchange.**

- **Senate HELP**
  - Existing group plans grandfathered indefinitely, as long as not "modified to a significant extent." **If the modification is deemed significant, everyone must enroll in exchange based coverage.**

- **Senate Finance**
  - Same as House
Public Plan Option

• The federal government will contract with entities to administer the option, but no risk will be transferred to the contracting entity

• Critics say:
  – Difficult for insurers to compete because of uneven playing field
  – Physicians and hospitals may lose money, as the reimbursement rates may be lower under both of options, and they may attempt to recover these losses by charging higher rates to non-public plans
Public Plan Option

- **House Bill = "Public Health Insurance Option"
  - Looks like Medicare in many ways (e.g., reimbursement rates for providers will be the same as Medicare, with allowances for geographic variations)
  - Required to comply with the requirements that are applicable to all Exchange–participating health benefit plans
  - Will offer at least three levels of coverage
  - Public Plan must negotiate rates of reimbursement to healthcare providers (Energy and Commerce amendment)
Why The Insurance Industry Opposes The Public Option

“The public option is not a compromise, but a strategic step toward the single-payer system and the elimination of the private insurance industry.”


“I think the best way we’re going to get single payer, the only way, is to have a public option and demonstrate the strength of its power.”

Community Health Insurance Option

- Senate HELP Bill = "Community Health Insurance Option"
  - Still looks a lot like Medicare, but includes provisions to try to mitigate criticisms that were made about the public plan option
    - Premiums must cover costs
    - Rates for provider reimbursement shall be negotiated by HHS
    - Consumer protection laws of a state shall apply
    - Start-up funds allocated to a federal trust fund must be repaid within 10 years
Community Health Insurance Option

• Community Health Insurance Option
  – Coverage only for the "essential health benefits" required to be provided by all Gateway plans
  – States will have flexibility to enhance coverage
  – Secretary of HHS will work with the NAIC to establish requirements
  – Administrator must be a non-profit entity

• Community Health Insurance Option would still enjoy significant advantage over private health insurance (immunity from law suits, taxes, most state insurance laws)
Cooperatives

- Senate Finance = Health Care Cooperatives
- Finance mark allocates $6 billion as seed grants
- Cooperate models frequently mentioned: Health Partners (MN) and Group Health (WA) (Nonprofit managed care company)
- Co-ops would be state-based and abide by rating and solvency rules
  - No mention of taxes
Employer Mandates

Coverage Level

House and Senate HELP - modified "pay or play" scheme.

- **House**
  - Employer must offer coverage that meets minimum requirements. If do not elect or substantially comply, subject to excise tax of 8% of payroll.
  - If elect, must offer minimum coverage, or subject to $100 per day penalty.

- **Senate HELP**
  - Must offer qualifying coverage or pay $750 per full-time worker, $375 per part-time worker.

- **Senate Finance**
  - No employer mandate. Non-offering employers of 50+ must pay a fee for each employee accessing exchange tax credits.
Employer Mandates

Minimum Premium Contribution

• House
  – For full-time employees, employers must contribute at least 72.5% for individual / 65% for family of contributions payable under employer’s lowest cost plan that meets essential benefits package. For part-time employees, employers must contribute proportionate amount.

• Senate HELP
  – Employer must contribute at least 60% of monthly premiums.

• Senate Finance
  – Not applicable
ERISA Impact

• Legislation would impose new benefit standards on all plans, including self-funded plans.

• Would end ERISA’s preemption by exposing self-funded groups to potential state criminal and civil actions

• Would permit states to adopt single-payer models that would preempt ERISA and mandate participation by self-funded groups (under a Dennis Kucinich sponsored amendment which passed the Education and Labor Committee)
Will You Be Able to Keep Your Current Plan?

• Despite the oft-repeated promise that if you like your current health insurance policy you can keep it, the bills under consideration all contain very strict grandfathering provisions. If you make minimal changes to your coverage you will lose your grandfathered status and have to buy a new policy.

• Yearly premiums for the typical American with private coverage could go up by as much as $460 as a result of increased cost-shifting and new mandates according to the Lewin Group Study released August 25, 2009.

“If you like your health plan, you can keep it, the only thing that will change is that you’ll pay less.”

President Barack Obama
Medicare Advantage

• HR 3200 proposes further Medicare cuts, including $160 Billion in subsidy cuts to the popular Medicare Advantage program over the next 10 years.

• 11 million seniors currently get their coverage through this program, and it is particularly popular in both urban and rural areas. Over 5 million Seniors are projected to lose the Medicare Advantage option if these cuts go through.

• Reduced reimbursement levels will affect hospitals, particularly rural hospitals, and physicians.

More Cost Shift (Hidden Tax) to the Private Sector
How Would It Impact LTC?

• The House and Senate HELP bill creates a new national insurance program, the CLASS Act.
  – **Employers are required to payroll deduct on an opt-out basis.**
  – Five-year vesting period before participants would be eligible for benefits. No underwriting required.
  – Initial premiums are estimated at $65 per month, although a provision was added to require that any premiums charged be actuarially sound for at least a 75 year period.
  – Actuarially sound benefits are to be developed by the Secretary and have been estimated to begin at $50 per day.

• To promote the purchase of private long-term care insurance, the House and Senate HELP allow LTC insurance premiums to be included in Section 125 plans.
  – CLASS Act/ Sect 125 LTCi NOT in the Senate Finance bill.
Predicting the Future is Tough Business

"I think there is a world market for maybe five computers."
-- Thomas Watson, President of IBM, 1943.

"Two years from now, spam will be solved."
-- Bill Gates, Microsoft, 2004

“Bear Stearns is fine! Don’t move your money from Bear!”
-- Jim Cramer, Host of Mad Money, March 2008; six days later, shares plunged 90%
What’s Next?

• What will happen with the public plan?

• Senate Finance passed its legislation out of committee.

• Senate HELP and Finance bills will have to be combined.

• House and Senate will have to pass legislation.

• Conference committee will create one bill that must pass both Chambers.

• Each step requires extensive negotiations.
For More Information

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