

House Passes Historic Health Care Reform Bill

After more than a year of negotiation, lobbying, and the highest political drama seen during the Obama administration, on Sunday, March 21, 2010, the U.S. House of Representatives passed two major pieces of legislation comprising an overhaul of the nation's health care system, on very tight margins and without any Republican support. The first part, the Senate-passed health reform bill (H.R. 3590), passed by a vote of 219 to 212. That bill went directly to President Obama, who will sign it into law this week.

“Sidecar” Bill

Immediately following passage of H.R. 3590, the House passed by a vote of 220 to 211, a sidecar bill (H.R. 4872), which will make significant changes to the Senate bill to reflect various compromises between the two chambers. Democratic leaders decided to move the sidecar package through the reconciliation process, which requires only a simple majority of 51 votes in the Senate, after the election of Republican Sen. Scott Brown (R-Mass.) in January 2010 deprived Democrats of a 60-senator supermajority that could break a filibuster. The Senate will begin a tough debate on the reconciliation sidecar bill as early as March 23, 2010. At least 50 senators have signed onto a letter, drafted by Senate Majority Leader Harry Reid (D-Nev.), pledging to support the sidecar bill. The debate in the Senate is expected to last at least all week and possibly into the spring recess scheduled to begin March 26, 2010.

Executive Order to Address Funding for Abortion Services

House Democrats secured the last remaining votes needed for passage after a deal was struck with a handful of conservative Democrats concerned with abortion-related bill language, led by Rep. Bart Stupak (D-Mich.). Rep. Stupak was concerned that the language in the Senate bill did not sufficiently prohibit federal funds from being used to cover abortion services. In exchange for their votes in favor of the health care reform bills, President Obama will issue an executive order affirming that no federal funds will be spent under the legislation to cover abortion services.

Manager's Amendment

After releasing the reconciliation sidecar bill on March 18, 2010, House leadership then released a manager's amendment on March 20, 2010 to address a few last-minute changes in the legislation that would garner a few more undecided Democratic votes. The manager's amendment eliminates a controversial provision that would have allowed only the Bank of North Dakota to continue making student loans. It also would provide additional Medicare reimbursement in 2010 for physicians in areas with below-average practice costs and create a \$400-million fund for additional Medicare payments in 2011 and 2012 to hospitals in counties ranking in the lowest quartile of per capita Medicare spending. The manager's amendment also lowers the tax on medical devices to 2.3 percent of the price of a device from 2.9 percent, but extends the reach of the tax to apply to simple products called “Class I” devices.

Associated Costs and Estimated Impact

The final package of the Senate-passed bill, plus the reconciliation sidecar and manager's amendment, is estimated by the Congressional Budget Office to cost \$940 billion over the first 10 years and reduce the deficit by \$148 billion during the same period. From 2020 – 2029, the legislation is projected to reduce the deficit by \$1.2 trillion. The legislation will cover 32 million Americans (one million more than the Senate-passed bill), or 95 percent of the legal population.

Coverage Changes for Individuals

The final package will require individuals to carry insurance or pay a tax penalty of \$695 with a maximum penalty of 2.5 percent of household income. Employers will not be required to cover employees, but will have to pay a penalty ranging from \$750 to \$3,000 for each employee who qualifies for a federal subsidy. The legislation will expand Medicaid eligibility to those earning 133 percent of the federal poverty level and provides federal subsidies on a sliding scale for those earning up to 400 percent of the federal poverty level. Health insurance exchanges will be created at the state level for individual and small-business consumers to shop for coverage. The package also will phase out the Medicare Part D coverage gap known as the “doughnut hole.”

Private Insurance Changes

Insurance companies will be prohibited from denying coverage based on pre-existing conditions, rescinding coverage when a patient falls ill, or setting lifetime limits on benefits. Young adults will be allowed to remain on their parents' insurance plans through age 26. Insurance companies will be required to have a Medical Loss Ratio (percentage of premium dollars spent on clinical services) of 85 percent for group plans and 80 percent for individual plans by 2011.

Payment Revisions

The legislation will increase Medicaid reimbursement for primary care physicians and Medicare bonus payments for select primary care services and general surgeons providing care in health professional shortage areas. The package provides incentives in Medicare for accountable care organizations (ACOs) and value-based purchasing and creates pilot programs for bundled payments to physicians and hospitals for a single episode of care. The bill also will create an independent payment advisory board to create binding proposals for Congress to slow the growth of Medicare costs.

Fraud, Waste, and Abuse

Fraud detection and prevention has been an important element of several health care reform proposals, and the legislation includes a variety of critical changes to federal law and enforcement activities that will flow out of the final package. For example, the package includes a variety of "transparency" provisions, particularly relating to physician ownership of hospitals and medical equipment companies as well as nursing home ownership. "Compliance and ethics programs" will be required of most health care providers, making current industry "best practices" now mandatory for providers doing business with government health care programs. New durable medical equipment (DME) companies will be subject to even more scrutiny. Additional financial resources will be expended for deployment in the government's fraud-fighting initiatives. An important new ability to self-disclose violations of the Physician Self-Referral (Stark) Law and seek negotiated reductions in penalties is expected to be part of the final package. Recently touted by President Obama, the Recovery Audit Contractor (RAC) "bounty hunter" program will be expanded to cover the Medicaid program.

Paying for the Revisions

The final package will be paid for in part by increasing the Medicare payroll tax to 3.8 percent on individuals earning more than \$200,000 annually (\$250,000/couple) and expanding it to apply to investment income. As noted above, the bill imposes a 2.3-percent tax on medical device makers. The package also is paid for by taxing the pharmaceutical and health insurance industries, and applies a 40-percent excise tax on high-cost health plans referred to as "Cadillac" plans of \$10,200 for individual coverage and \$27,500 for family coverage. The bill lowers Medicare provider payments to hospitals, hospice, and home health agencies. The package cuts federal funds to private Medicare Advantage plans through a competitive bidding program, yielding \$132 billion in savings over 10 years.

Foley & Lardner LLP will provide detailed information on many of the critical elements of the new health care reform law over the coming weeks. Please contact any of the individuals listed below or your regular advisor at Foley for more information on any aspect of the legislation.

For your reference, the following are links to the critical documents involved in these developments:

- Text of Reconciliation Sidecar
(http://docs.house.gov/rules/hr4872/111_hr4872_amndsub.pdf)
- Text of Manager's Amendment
(http://docs.house.gov/rules/hr4872/111_managers_hr4872.pdf)
- Summary of Final Health Care Reform Package
(<http://www.house.gov/energycommerce/SUMMARY.pdf>)
- Timeline of Implementation
(<http://www.house.gov/energycommerce/TIMELINE.pdf>)
- Senate-Passed Health Care Reform Bill, H.R. 3590
(http://docs.house.gov/rules/hr4872/111_hr3590_engrossed.pdf)

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