



# **Washington Update**

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# Comprehensive Health Reform

- Current focus is on comprehensive reform.
- President Obama laid out his aggressive timetable of for a bill passed this summer at the recent White House Summit.
- Timetable further reinforced in Obama's budget proposals.
- Echoed by Senators Kennedy and Baucus who have been working on legislation with stakeholders for months.
- They will likely release their bill in late May/early June
  - Baucus may introduce several bills released in stages.
  - Likely to each introduce their own measure(s) to be combined later in Committee or when they reach the Senate floor
- Senate Republicans are working on this issue too, and holding their own internal strategy meetings as well as looking for ways to cooperate on a bipartisan basis.

# Comprehensive Health Reform

- House leaders initially indicated that they did not want to tackle health care reform until 2010.
- Now, chairs and subcommittee chairs of the three committees of jurisdiction have vowed no turf wars and a bill passed out of all three committees by August recess.
- Gang of six Democrats working on House reform legislation
  - Waxman (CA) and Pallone (NJ)—Energy and Commerce
  - Rangel (NY) and Stark (CA)—Ways and Means
  - Miller (CA) and Andrews (NJ)—Education and Labor
- House Republican less organized. Working on alternatives but the GOP conference is all over the map.

# Health Reform in the Federal Budget

## Blueprint Resolutions

- As a preface to comprehensive reform legislation, both the House and Senate included health reform spending plans in their FY 2010 budget resolutions.
  - House Version
    - Passed with a 233-196 vote, with all Republicans voting nay as well as 20 Democrats
  - Senate Version
    - Passed with 55-43 vote, with all Republicans voting in opposition, and Democratic Senators Ben Nelson and Evan Bayh also voting in opposition
- Both versions of the budget establish deficit-neutral reserve funds that grant extraordinary flexibility to the authors of health reform legislation to create the policies they favor and reach widely for budgetary savings to pay for the effort.
- Major difference between House and Senate budget resolutions relative to health care is the use of reconciliation instructions in the House version.

# Reconciliation Instructions

- On Friday, April 24 news was made public that White House and Congressional leaders have agreed to include reconciliation in the budget resolution for health care with a deadline attached, despite the strenuous objections of ALL Republicans and many Democratic Senators.
- This means the budget only activates the reconciliation process in the event that there's no bill by the fall.
- Reconciliation then acts as an enforcer on the legislative time frame: If the two parties can't come to agreement by October 15, the reconciliation process activates.

# Reconciliation—How Does It Work?

- What does this mean?
  - If comprehensive health reform is not completely passed and signed into law by October 15, 2009, then legislation will be put through under reconciliation instructions
  - Reconciliation instructions limit debate to 20 hours, as well as the opportunity to offer amendments in the Senate. Legislation could be rushed through—no filibusters.
  - Allows legislation to pass with a simple majority of 51 votes rather than the filibuster-proof majority of 60 votes required under regular order.
  - However, whatever policy goes through reconciliation has to abide by the “Byrd rule” which imposes a set of sharp constraints on the reconciliation process, limiting what is considered appropriate for reconciliation.

# How the Byrd Rule Will Impact Health Reform

- The Byrd rule stipulates that any legislation considered under the budget reconciliation process should principally affect federal revenues.
- A tax cut, for instance, can be considered under the reconciliation process. A new federal holiday cannot. But between those two examples sit crucial ambiguities.
- The Byrd rule allows any Senators to challenge the acceptability of any provision (undefined) of a reconciliation bill based on whether or not its effect on government revenues is "merely incidental" (undefined)
- The tax portions of the bill and any subsidies would clearly be relevant. But are market reforms "merely incidental" to government revenues? How about wellness incentives? Or the construction of a connector or government-run public plan? An individual mandate?
- The Senate parliamentarian would make these rulings and the resulting bill could be as full of holes as piece of Swiss cheese.
- The GOP has already made it very clear that they will use every procedural weapon in their arsenal to make this process as difficult for the Democrats as possible.

# How Reconciliation Impacts NAHU's Role in Health Care Reform

- While NAHU strongly opposed the use of reconciliation for health care reform, the current budget resolution is not the end of the world.
- Reconciliation only comes into play if a bill can not be agreed upon by October 15.
- Our role as the only agent and broker group helping to negotiate bill language through the Kennedy and Baucus stakeholder groups has become all the more critical.
- So has the grassroots actions of our members.
- We need all players to stay in the game and negotiate a good compromise bill that we can all live with before the October 15 deadline.
- All members of Congress need to be clear on the role agents and brokers play in our system as they negotiate legislation this summer.

# Health Care Reform Hearings

- In addition to the budget, every committee with significant jurisdiction over health issues in both chambers (Senate HELP and Finance, House Energy and Commerce, Ways and Means and Education and Labor) all are in the midst of health reform hearing series.
- NAHU submits written statements to all relevant hearings even if we are not called to testify.
- House Education and Labor Committee had a hearing on April 23 and NAHU CEO Janet Trautwein testified on the employer-based system.
- Senate Health, Education, Labor and Pensions Committee (HELP) had Janet Trautwein testify about market reforms and a government-run public plan option on March 18.

# Gov. Sebelius Confirmation as Secretary of HHS

- On April 21, the Senate Finance Committee voted 15-8 to approve the nomination of Governor Kathleen Sebelius (D-KS) as secretary of Health and Human Services.
- The vote was on largely partisan lines with Senators Roberts (R-KS) and Snowe (R-ME) voting with Democrats. Republicans on the committee cited Sebelius' support of abortion rights and concerns about her answers to questions relative to comparative effectiveness research as the reasons why they opposed her nomination.
- The Senate will consider her nomination on the Senate floor on Tuesday, April 28 with up to 6 hours of debate.

# Comprehensive Health Reform

## Topics

- Individual mandate extremely likely
  - Enforcement, phase-in, exemptions under discussion
- Individual and Small Group Market Changes extremely likely
  - Guarantee Issue
  - Restrictions on underwriting, preexisting conditions, premium standardization
  - Minimum loss ratio specifications very possible

# Comprehensive Health Reform

## Topics

- Potential National Connector or Exchange
  - Connector as a purchasing pool like MA?
  - Virtual connector/Travelocity Model
  - Public Plan option to compete with the private market?
  - Mechanism to administer subsidies?
- Employer Mandate
  - Economic impact key
  - Possible change to the tax treatment of health insurance?
- Long-term care
  - Low income options beyond private coverage?

# Comprehensive Health Reform

## Topics

- Focus on Health Care Cost Containment
  - Wellness, prevention, Health IT, comparative effectiveness, source of alternative funding
- Uncertain future for:
  - Medicare Advantage market
    - Grassroots campaign
    - Stories from seniors and disabled beneficiaries
  - Consumer-Directed Health Care Options
- Large-Group Market/ERISA least likely to change

# COBRA Guidance from DOL

- The Department of Labor released guidance on the new COBRA premium subsidy created in the American Recovery and Reinvestment Act
- Employers must inform all potentially eligible former works that they might qualify for COBRA assistance by April 18<sup>th</sup>
- DOL model notices

<http://www.dol.gov/ebsa/COBRAmodelnotice.html>

# Other COBRA Resources

- NAHU has prepared a one-page model document to help explain subsidy provisions and new guidance/notice requirements that you can use with clients
- Access the NAHU one-pager and other information at <http://www.nahu.org/legislative/COBRA/index.cfm>
- IRS has released information for employers on administering the subsidy program: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>
- Department of Labor has informational materials for employers, including a fact sheet and FAQs: <http://www.dol.gov/ebsa/COBRA.html>

# Health Care Reform at the State Level

- Many states will be in a holding pattern in 2009
  - Budget Issues
  - Looking to see what will be done on the federal level
- Stimulus \$\$/State Medicaid match is just temporary
  - States will receive \$87 million in increased Medicaid federal matching dollars over the next 27 months to sustain their existing programs, NOT expand them.
  - States are prohibited from expanding their eligibility requirements during this time, which runs from Oct. 31, 2008 through Dec. 31, 2009.

# Health Care Reform at the State Level

- Trends in state legislation include:
  - Mandates, particularly the coverage of Autism Spectrum Disorders
  - Minimum Loss Ratios
  - Connectors/Pooling/Portals
  - Premium Assistance and efforts to expand public coverage enrollment to all those eligible.

# NAHU Individual Market Policy Recommendations

- Of all the health insurance market changes that a comprehensive health reform effort may address, NAHU expects that the individual health insurance market will receive the most scrutiny.
- We also think this market has the greatest need for reform.
- Our goal as an association is to ensure that all people, regardless of their health status and pre-existing medical conditions, have the ability to purchase affordable private individual coverage.
- NAHU released a set of 10 new individual market policy recommendations in February

# NAHU Individual Market Policy Recommendations

- Require guarantee access to individual coverage and also create state-level financial back-stops for catastrophic risks to keep coverage affordable.
- Give pre-existing condition credit for prior individual market coverage to ensure true health insurance portability.
- Standardize state requirements regarding the consideration of pre-existing conditions.
- Improve federal group-to-individual coverage portability provisions so that people can transition directly from employer coverage to individual coverage without hurdles.
- Stabilize individual market rates by requiring more standardization as to how individual market carriers determine pricing.

# NAHU Individual Market Policy Recommendations

- Increase consumer protections regarding individual market coverage rescissions.
- Make it easier for employers to help people purchase individual health insurance.
- Provide federal financial assistance to keep individual health insurance coverage affordable, including enhanced deductibility, subsidies for low-income individuals and federal financial support for qualified state financial back-stop programs.
- Ensure that all Americans have health insurance coverage.
- Allow state implementation of enhanced consumer protections.

# What Reforms Will Help?

- Americans deserve a system that is *responsible*, *accessible* and *affordable*.
- The system should *boost* the *health of our people* and of *our country's economy*.
- Americans also deserve a system that is *realistic*.
- We should *build on the strengths of the current system* and *guarantee access to coverage* for all Americans.

# Requirements of Reform


- Must address and reduce skyrocketing medical care costs.
- Must ensure all Americans have access to health care coverage.
- Must not bankrupt families, the country or individual states.
- Must provide the country's diverse population with equally diverse health care coverage choices.
- Should embrace the American principles of individual responsibility and freedom of choice by avoiding the trap of a one-size-fits-all approach.

# Requirements of Reform



- Must promote ongoing and long-term innovation and experimentation to enable the nation's health care system to adapt over time to the evolving needs of its citizens.

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  - Must provide consumers with access to meaningful information to enable wise treatment choices and expert advice and counseling from licensed and trained professionals.
  - Must not harm the 85 percent of Americans who have health care coverage under the current system.
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# The Three Indicators of Responsible Reform

## ***1. Cost Containment***

- Does it constrain rapidly rising medical costs?

## ***2. Access for All***

- Does it guarantee that every American has access to health care coverage?
- Does it empower Americans to find and choose the health care coverage that best fits their unique needs?
- Does it enable health care coverage to evolve with changes to the country's population, their needs and expectations?

## ***3. Affordability and Financial Access***

- Can the country afford the plan? Can the people afford the plan?



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