

2009 Health Reform Update



October 27, 2009

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It's still difficult to foresee what 2009 health reform will look like. The political pressure and negative re-election implications of not passing some type of health reform this year are so large that legislation remains likely. But, the differences are so significant between House and Senate health reform proposals – and even reform legislation within each legislative body – that the final 2009 legislation may be a far cry from the expectations before August of this year.

It's been almost a month since the Senate Finance Committee passed its proposed bill and compromise negotiations in the Senate and House began, and little appears to be resolved. The different interest groups and constituencies are aggressively pushing their positions, which makes compromise and a final bill seem more distant than at hand. The public plan continues to be the hottest topic, and the current ideas to find middle ground include state opt-in, state opt-out and performance trigger provisions – each having its own set of new dynamics on the health care marketplace. The toughest issues around how to pay for health reform and mandate individual and employer participation have yet to be addressed. Meanwhile, national polls show 80% of Americans now think they'll pay more for health care and only 22% expect to have better access to affordable, quality health care after legislation – the supposed underlying principles/objectives of health reform.

Here are key reform provisions and some underlying politics to watch in the coming weeks.

Reform Provisions

- *Employer Mandate* – the Senate Finance Committee bill doesn't have one while the primary House bill has a "play or pay" provision with an 8% payroll tax for employers not providing health care to employees; this outcome will be most significant for employers.
- *Benefits Plan Tax Treatment* – the Senate Finance Committee wants to tax "high value" health care plans while the House bill focuses on taxing the highly compensated; this outcome will be driven by the tax revenue needed to cover health reform, and additional maximums or restriction on the employer/employee tax advantages of health care benefits are possible.
- *Minimum Benefits* – both Senate and House bills have minimum benefit requirements, with the House bill being much more detailed and expansive; CDHP/HDHP plans could be impacted and even eliminated if these minimum benefit provisions are enacted.
- *ERISA Preemption* – both Senate and House bills threaten the current ERISA preemption over state insurance laws, which will create much greater benefit administration costs and complexity for multi-state and self-funded employer plans.
- *Public Plan* – all of the prominent proposals include a public plan option except the Senate Finance Committee bill that encourages non-profit cooperatives and exchanges; although

this provision gets much attention, it may be less significant to employers than the above list of provisions.

- *Wellness Plan Support* – 100% benefits for preventive care and Medicare/Medicaid wellness initiatives are likely, but only the House bill offers subsidies/tax credits to encourage employer wellness programs; government support for this long-term employer cost containment strategy may fall victim to the need for immediate savings programs.
- *Quality Care & Patient Safety* – all bills encourage pay-for-performance reimbursement arrangements and evidence-based medicine review programs; the key for employers is whether these provisions are mandated for both government and private insurance plans – if not, providers may cost-shift lost government revenue sources to employer plans.
- *Medicare Benefit & Cost Containment Changes* – both Senate and House bills reduce or eliminate the Part D “donut hole” issue and revise provider payment and accountability systems; these latter changes pose a cost-shifting risk to employer plans.
- *Supplier Surcharges* – most of the proposals, especially the Senate Finance Committee bill, use some type of surcharge on health care marketplace suppliers/providers to “pay” for health reform; these assessments may be a significant cost-shift risk to employer plans.

Underlying Politics

- The prominent reform proposals expand Medicaid availability to achieve medical coverage access goals for the current un-insureds, but they don’t address increasing the Medicaid funding to the states; most states will be bankrupt unless this funding issue is resolved.
- There’s increasing scrutiny and noise around the lack of true health care cost containment and the “softening” of the individual mandate provisions for universal coverage, which are 2 of the 3 guiding principles of the President’s health reform initiative.
- Both Senate and House leadership first need to draft bills that can pass their own houses, which won’t be an easy task; then, they must reconcile their differences into one piece of legislation that goes to the President for signature.

With the House remaining more liberal in their proposals and the Senate trying to find a more moderate position, there’s much still to do in a short period of time. We will continue to share our strategic insight and update you on what’s happening in the coming weeks.