



WEEKLY UPDATE ON HEALTH CARE REFORM

February 19, 2010

In the weeks since the election of Massachusetts Republican Scott Brown to the Senate derailed the Democrats' plan for enacting a comprehensive health care bill, there has been constant reassessment by the White House and congressional leaders about how to proceed. The fate of the issue is very much a moving target.

Massive media attention will be focused on next week's "summit" meeting arranged by the White House that will include both Democratic and Republican leaders. Expectations for this half-day long meeting, which is scheduled to be broadcast live, are low. Many speculate that this meeting is more of a blame-posturing exercise than a legitimate opportunity for a bipartisan opening on this polarizing issue. There are reports that the White House is working on its own version of a bill that would attempt to garner more Republican support, but it is unclear whether such a draft could be readied in time to be discussed at the summit meeting. Regardless of the outcome, odds are that the result will be renewed momentum behind the Senate bill, as any compromise would be considered "too little, too late" for most Democrats, and the national media's drumbeat on the issue will resume.

While the prospects for comprehensive health reform have severely diminished, it would be a very serious mistake to underestimate the determination of many in Congress to enact such legislation, in either broad or incremental forms. Keep in mind that both chambers passed comprehensive bills, and the "reconciliation" option remains available to Democrats in the Senate. Reconciliation is the budgetary process in which a simple majority of 51 votes in the Senate is necessary to advance legislation, rather than a filibuster-proof 60-vote majority.

As we have previously reported, when the Massachusetts situation became evident to Democrats, there were serious discussions about having the House take up and pass the Senate bill (bypassing the need for a "conference" between the chambers) in tandem with a separate reconciliation process that would be agreed upon by House and Senate leaders. This approach has its limitations and nuances, but many aspects of health reform could be moved via this process. As we have also noted, a potential reconciliation bill would likely include adjustments to the Senate's excise tax on high-cost plans so it hits fewer people; increased federal subsidies; a plan to close the gap in Medicare prescription drug coverage; and elimination of provisions that would have the federal government pay for all future Medicaid expansion in the state of Nebraska.



Pervasive public anger at health insurers, particularly in the aftermath of reports regarding Anthem's recent large rate increases in the individual California market, will also generate pressure to maintain some momentum reform efforts. Members of Congress from both parties have expressed their intent to deal with insurance market reforms associated with preexisting conditions restrictions, guaranteed issue and community rating. Of course, these issues are knotty and cannot be easily reconciled in the absence of a workable individual mandate, one which Congress seems loathe to impose.

When Congress reconvenes next week, one of the first measures the full House will address is the stand-alone bill to end the health insurance industry's perceived antitrust protections under the McCarran-Ferguson Act, mentioned in our February 4, 2010 update. Such a measure was already a part of the House-passed comprehensive reform bill. The antitrust protection issue as related to health insurance is widely regarded as non-substantive. So the push to repeal the protections is considered to be more a matter of demagoguery. However, we do note that there should be little practical impact from such a repeal, as health insurers do not typically share claims information or seek protection from antitrust laws. It is unclear whether the Senate will take up similar legislation.

While it is still too soon to completely rule out any possibilities, seasoned observers believe it is somewhat unlikely that procedural maneuvers like reconciliation could ultimately achieve broad health care reform aims. On the other hand, the toxic political environment that is consuming Capitol Hill may result in politically risky strategies. Democrats continue to think that they can win the public relations battle on legislation once a bill is signed into law, and mounting Democratic retirements may shift the focus to legacy rather than reelection for some members. There are also few critical issues on which Republicans are likely to compromise, given the new political wind at their backs, making a bipartisan solution increasingly unlikely. So the upshot is that observers continue to keep an eye out for developments on the reconciliation front, in addition to watching for stand-alone bills from Congress, and a possible new bill from the White House – all moving targets.