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## WEEKLY UPDATE ON HEALTH CARE REFORM

February 26, 2010

Democratic efforts to re-build momentum on their health care reform plans were on full display this week, with Monday's introduction of the President's own plan, passage of legislation to repeal the insurance industry's antitrust exemption on Wednesday, and Thursday's health care reform summit for legislators hosted by the White House. Administration officials have also seized on the proposed 39 percent individual rate increase by Anthem in California to build a sense of urgency.

The summit was a seven hour marathon, and was a condensed version of the entire policy debate that has occurred over the last year regarding reform. Democrats pushed their comprehensive reform ideas while Republicans urged throwing out the bills already passed by Congress and starting over. Republicans did not offer a specific alternative plan, but advocated taking smaller steps toward reform and concepts such as medical malpractice reform, high-risk insurance pools, a way to allow Americans to shop out of state for lower-cost plans, and an expansion of health savings accounts.

As nearly everyone anticipated, the summit did not lead to any kind of breakthrough on a bipartisan agreement. But the most important sound-bite may be the President's observation at the outset that "I don't know that those gaps [between Democrats and Republicans] can be bridged," which is most telling because he made the comment before debate at the summit had even really begun. Many believe this portends that the Democrats will indeed push forward on their own.

As for the President's health care reform plan, it purports to "merge" the major provisions of both the House-passed and Senate-passed bills, but it appears more similar to the Senate version. Notably, the Administration proposal appears to eliminate the non-profit health insurance CO-OPs that were included in the House and Senate versions, and the Senate's voucher program that would allow lower income workers to take their employer contribution in the form of a voucher to buy insurance through the insurance Exchanges.

The Administration's proposal would maintain the state-based exchange system under the Senate bill and the unpopular tax on high-cost health insurance plans, which the Administration proposes to delay until 2018. And like the Senate bill, there is no public option in the Administration's plan. The Administration proposal would also delay implementation of the taxes on various health care industry players, and would change the fee on medical device manufacturers to an excise tax. Additionally, the Administration proposal includes a boost in tax subsidies for low- and moderate-income individuals to purchase insurance and bigger penalties on larger employers that do not provide health insurance. The Administration proposal maintains the individual mandate, and fees on employers who do not provide coverage.



A significant new proposal in the Administration's plan is to give the Department of Health and Human Services new powers to review premium increases by private insurance companies, and a new board, the Health Insurance Rate Authority, made up of health insurance experts, would be created to determine on an annual basis what reasonable premium hikes are in various markets. Both measures are designed to enable HHS to work with state officials to ensure insurance companies are not able to raise premium rates "unreasonably."

The White House proposal maintains most of the market reforms from the Senate legislation, including minimum medical loss ratios and rebates by carriers who fail to meet those ratios, a pool for individuals with pre-existing conditions, a prohibition on rescissions, no annual/lifetime limits, extended dependent coverage, no cost-sharing for preventative care, no gender discrimination, and guaranteed insurance renewal.

Other aspects of particular interest are:

- High-Cost Plan Excise Tax: The White House plan would delay the tax for all plans until 2018, and further raise the threshold at which the tax would kick in from \$8,500 for singles to \$10,200 and from \$23,000 for families to \$27,500. These amounts would be indexed for subsequent years at general inflation plus 1 percent. To the degree that health costs rise unexpectedly quickly between now and 2018, the initial threshold would be adjusted upwards automatically.
- Modifications to "Grandfathered Plans": The President's proposal maintains the "grandfather" policy from the Senate bill allowing individuals to maintain current coverage. However, the grandfathered plans will be subject to many of the market reform requirements that they were not subject to under the House and Senate proposals, such as annual rate review, backed up by the oversight of the HHS Secretary.
- Employer Mandates: Like the Senate bill, the President's proposal does not require employers to offer or provide health insurance but does impose tax penalties on any employer that has over 50 employees and that does not provide a requisite minimum level of coverage. In contrast to the Senate bill, the President's proposal modifies the tax calculation on large employers who do not offer coverage. Employers with 50 or more workers can subtract out the first 30 workers from the payment calculation (i.e. - a firm with 51 workers that does not offer coverage will pay an amount equal to 51 minus 30, or 21 times the applicable per employee payment amount). The proposal also changes the applicable payment amount to \$2,000 for firms with more than 50 employees that do not offer any coverage. It would apply the same firm-size threshold across the board to all industries and eliminate the assessment for workers in a waiting period, while maintaining the 90-day limit on the length of any waiting period beginning in 2014. Consistent with the Senate bill, small businesses with fewer than 50 workers would be exempt from any employer responsibility policies.



- Multiple New Tax Provisions: Most, if not all of the revenue generators in the President's plan come from the Senate bill, with a few tweaks. For example, the President's plan delays the effective date of some of the new taxes, including a one year delay beyond the 2011 date in the Senate bill for the provision that would eliminate the deduction for employer expenses allocable to the Medicare Part D subsidy.

It is important to note that at this point, only an outline of the Administration proposal has been circulated; no legislative text is available yet, and as is so often the case, the details mean a great deal. Click link for a memo that provides more information concerning the President's outline.

[http://www.trion.com/healthreform/documents/WH\\_hcr\\_summary\\_memo\\_for\\_Trion.pdf](http://www.trion.com/healthreform/documents/WH_hcr_summary_memo_for_Trion.pdf)

Now comes (as always) the question of whether there is any chance that comprehensive reform will be passed by Congress this year. As previously noted here, Democrats need only to marshal their own members to pass comprehensive reform, using the "reconciliation" process. There are two basic views in Washington at the moment about the path of health reform. One of the views is that comprehensive reform cannot be achieved and that the President's actions this week are political theater. The efforts, for example, to enlist GOP support via the summit were doomed from the start, as witnessed by a comment from the spokesman for House Republican Leader John Boehner that "It would be bald-faced hypocrisy to continue hammering out the latest partisan backroom deal while preparing for a 'bipartisan' summit." Many believe that moderate Democrats in both chambers will be unwilling to walk the plank on health reform as they did in 2009, realizing the political toxicity of the issue in the aftermath of the populist revolt in Massachusetts that resulted in the election of Republican Scott Brown (R-Mass.), to the Senate.

On the other hand, there is considerable pressure among Democratic leaders to get the issue off their plate through relatively swift enactment. This would then allow Democrats an opportunity to move on to the issues of jobs and the economy, eight months before the mid-term elections.

In short, it is still too early to assume that these issues have run their course. Once the dust has time to settle from the summit – regardless of whether it is believed to have been a genuine effort or a photo op – we should have a better sense of what, if any, reforms will be moving forward in the coming weeks.