

NEWSSTAND

Healthcare Update: Last Week in D.C.: The Healthcare Reform Debate

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Healthcare negotiations steadily moved forward last week, as details emerged on a potential timeline for completing action on a final bill in the coming weeks. Despite optimistic endgame statements from Democratic leaders on both sides of the Capitol, legislative language remained in the final stages of negotiations by the week's end, as leaders continued to count votes and await final cost estimates.

ENDGAME TIMELINE EMERGES:

As high level negotiations progressed throughout the week, a tentative timeline to get healthcare reform legislation across the finish line was made public on Thursday. According to plans, the House Budget Committee will begin action today, approving changes to the Senate healthcare reform bill (H.R. 3590) by way of the budget reconciliation process. These corrections will largely follow the outline put forth by President Obama in late February. From there, the House Rules Committee would convene on March 16 or 17, in order to set the rules for debate on both H.R. 3590 and the reconciliation bill. Once rules are in place, the two measures could reach the House floor simultaneously as early as the end of the week, according to House leaders.

Upon House passage of both bills, H.R. 3590 would then be cleared for the President's signature, as no changes would be made to the legislation that the Senate previously approved in late 2009. The reconciliation bill – which will contain the corrections to H.R. 3590 necessary in order for House Democrats to agree to its passage – would then move to the Senate, where the procedural rules governing the complex reconciliation process will protect the measure from a filibuster and allow for only 51 votes for final approval.

POTENTIAL COMPLICATIONS:

The aforementioned timeline and endgame strategy is not without a host of potential complications – scenarios that House and Senate leaders spent the week working to resolve.

Knowing that Republicans have stated that they intend to use a variety of procedural steps to stop the reconciliation measure once it makes its way to the Senate has caused ongoing concern among House Democrats that the House could take a difficult vote on healthcare reform only to have the bill languish in the upper chamber. As a result, House leaders are considering a strategy in which their Members may not have to vote directly on the Senate bill they do not wholly

support, by crafting the final legislation in such a way that it would "deem" the Senate bill passed once the House approves the reconciliation package of corrections.

In addition to procedural concerns, House leaders must also contend with the belief that although Speaker Pelosi is close to securing the votes needed pass a final healthcare effort in the House, she has yet to clear the necessary 216 vote hurdle, namely due to lingering concerns over the issue of federal funding for abortion.

When the House cleared its original healthcare reform bill in November 2009, a group of anti-abortion Democrats succeeded in adding airtight restrictions to ensure that no federal dollars go toward the coverage of abortion services. By contrast, the Senate bill's abortion funding prohibition language is less restrictive, and at least several House Democrats have indicated that they may withhold their votes should that language not be tightened. Complicating matters are the rules that bar any non-budget related items from being addressed in a reconciliation bill – a restriction that would likely include abortion language.

By the week's end, House leaders appeared ready to move forward without resolving the controversial issue, expressing optimism that they would ultimately have enough votes to pass a final bill without tightening the Senate bill's less restrictive abortion provisions.

NEXT STEPS:

Though noncommittal on an exact timeline, Speaker Pelosi has made clear to her caucus that a final healthcare vote could occur as early as this week, and has asked that Members clear their schedules through the weekend in order to move the Administration's top domestic priority across the finish line. In addition, President Obama has postponed his upcoming trip to Asia until March 21 in order to continue his push for healthcare reform – another sign that the House may act this week.

The exact procedural strategy that will be employed remains under final negotiation, and we continue to closely monitor this fluid process as it nears its long awaited conclusion.

The Healthcare Reform Legislation ultimately adopted may affect many segments of the healthcare industry, including providers and suppliers, insurers, educational institutions, pharmaceutical and medical device companies, as well as employers and other constituencies within the healthcare industry at large. We will be releasing further advisories addressing the impact of the legislation on specific practice areas and industries when it becomes final.

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Should you have any questions on the content of this advisory, or wish to discuss any other healthcare related issue, please contact those listed below or call the Edwards Angell Palmer & Dodge LLP attorney responsible for your affairs.

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