

## NEWSSTAND

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

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Democrats moved steadily forward last week on their reinvigorated efforts to enact comprehensive healthcare reform, as the White House specified its procedural preferences and Congressional leaders continued to hammer out policy provisions. However, given the various complications that stand in their way, it remains to be seen whether Democrats will be able to finalize legislation before the end of the month – their new self-imposed deadline.

#### **PRESIDENT OBAMA ENDORSES USE OF RECONCILIATION:**

On Wednesday, President Obama urged Congress to complete work on healthcare reform and deliver a final bill to his desk “in the next few weeks,” and that a reform bill deserves an “up or down vote.”

While never mentioned specifically by name, the President’s comments were an implicit endorsement of the use of the budget reconciliation process as a means to get a final bill across the finish line. This subtle endorsement gave Congress the green light to move forward on a two-pronged strategy that has been under consideration since the January special election in Massachusetts stripped Senate Democrats of their 60 vote supermajority.

Under this strategy, the House would pass the Senate’s already-approved healthcare legislation (H.R. 3590) without any changes, negating any need for another trip to the Senate that would require 60 votes for passage, and sending the bill directly to President Obama’s desk. House and Senate Democrats would then turn to a negotiated package of fixes to H.R. 3590, in order to alleviate the concerns that many House Democrats have stated they have with the legislation in its current form. This corrections package would move through Congress via budget reconciliation – a complex procedural process that would protect the measure from a filibuster in the Senate and allow for passage with only 51 votes.

#### **CONGRESS PREPARES FINAL BILL & SETS TIMELINE:**

House and Senate leaders have already begun work on a corrections bill based on the proposal put forth by the White House two weeks ago in advance of its healthcare summit, and have indicated that such work could be completed in the coming days. Once legislative language is finalized, the bill would then be sent to the Congressional Budget Office (CBO) for official cost estimates – a process that could take about a week to complete.

In order to mollify House Democrats' concerns, it is expected that the corrections package will include Medicaid equality and expansion provisions, language to close the Medicare prescription drug coverage "donut hole", additional federal assistance provisions to help low and middle income families afford insurance, and language to delay and weaken the proposed excise tax on so-called "Cadillac" healthcare plans.

On Thursday, House Majority Leader Steny Hoyer (D-MD) stated that he expects the House to move on final healthcare legislation by the time Congress adjourns for a two-week Easter recess, currently set to begin on Friday, March 26. This ambitious timeline meets President Obama's expectations, though it is not without a host of potential roadblocks.

First, House Speaker Nancy Pelosi (D-CA) must secure the necessary 217 votes from within a Democratic caucus in which individuals and factions are already expressing skepticism and threatening to withhold their votes. Many moderate Democrats who opposed the original House bill last November for fiscal reasons have given no indication that they will change their votes, while at the same time, pro-life Democrats who supported the House bill after a stringent anti-abortion clause was added are threatening to oppose a corrections package should the more lenient abortion language in the Senate bill remain unchanged.

Once again, Speaker Pelosi finds herself in a delicate balancing act in which she cannot afford to lose a single Democratic vote, and she has indicated that she will not have a firm head count until the corrections package is finalized and scored by CBO.

In addition to specific policy concerns, House Democrats have expressed concerns over the complicated and risky process now necessary in order to enact healthcare reform legislation. Many Democrats – particularly those facing tough reelection battles in November – do not want to take another difficult vote on healthcare only to see the reconciliation process get tied up in the Senate due to numerous potential procedural difficulties. As a result, House and Senate leaders are discussing the possibility of getting 51 Democratic Senators to commit – in writing – to passing the corrections bill, in addition to other scenarios that would provide similar security.

Further complicating matters is the seemingly unanimous Republican opposition that was solidified following the recent White House healthcare summit.

### **NEXT STEPS:**

The next several weeks will determine the fate of comprehensive healthcare reform efforts. Should Democrats fail to enact legislation by Easter, it will be increasingly difficult to maintain momentum in the debate, as many rank and file Members will push to re-focus efforts on job creation in the months leading up to this year's pivotal midterm elections. As previously noted, the complex legislative process necessary to push President Obama's top domestic priority across the finish line consists of many moving parts and unpredictable factors, and we will continue to closely follow this fluid situation and provide relevant updates.

***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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