

NEWSSTAND

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

January 19, 2010

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The House returned to session last week, as intense negotiations continued behind the scenes on an agreement that will reconcile the differences between the House- and Senate-passed healthcare reform bills. On Thursday, a compromise was reached on one of the Senate bill's more controversial provisions, smoothing a possible path toward a final agreement in the coming weeks.

MARATHON NEGOTIATING SESSIONS YIELD PROGRESS:

Congressional leaders huddled at the White House with President Obama and Administration officials throughout the week, working for hours on end to find common ground on the remaining differences between the House and Senate healthcare reform bills (H.R. 3962 and H.R. 3590, respectively). Negotiations have reportedly ranged from revenue raising provisions to the scope and structure of health insurance "exchanges" that would serve as a marketplace where individuals and certain businesses could shop for coverage.

In addition to House and Senate leaders, key union officials were also on hand for the lengthy negotiations over the Senate bill's tax on so-called "Cadillac" health insurance plans. The White House has made clear it prefers the Senate's excise tax as a revenue raiser as opposed to the House bill's surtax on wealthy Americans, though the Senate provision has been met with fierce resistance from organized labor due to the impact it would have on workers whose collective bargaining agreements often forgo higher wages in exchange for top-of-the-line health insurance plans.

The agreement reached between Democrats and union leaders on Thursday includes a higher cost threshold before the new excise tax kicks in – a provision that is set to begin in 2013. In addition, the health plans of union workers under collective bargaining agreements as well as all state and local government workers would be exempt from the tax until 2018. Further, dental and vision plans would not count toward the excise tax threshold, and factors such as high-cost geographic areas, age and gender would also receive exemptions.

The excise tax agreement will yield an estimated \$60 billion less than the original Senate bill, leaving lawmakers to make up the lost revenue elsewhere. It has been reported that pharmaceutical companies, hospitals and/or medical device makers may be asked to accept additional fees or reimbursement cuts, and an adjustment to the Medicare payroll tax increase on wealthier seniors could also be considered.

THE MASSACHUSETTS FACTOR:

The uptick in urgency over the past week to complete a final agreement on healthcare reform can be attributed at least in part to the special election to fill Massachusetts' vacant Senate seat. A non-issue just a month ago, the campaign leading up to today's special election has recently grown much closer than expected in a state that has long been a Democratic stronghold. Should Republican candidate Scott Brown defeat Democrat Martha Coakley, Democrats would then control just 59 seats in the Senate – one vote shy of the number needed to prevent a Republican-led filibuster of a final healthcare reform bill.

NEXT STEPS:

This week, all eyes will be on today's Massachusetts special election, and Democratic leaders will continue to work to secure votes for a final healthcare reform bill and discuss outstanding issues that will not affect the final cost of the bill, such as language to prevent federal funding for abortion as well as restrictions that would impact illegal immigrants. In addition, Democrats will await cost estimates from the Congressional Budget Office – an occurrence that, if positive, could pave the way for final votes in the House and Senate in the coming weeks. While no longer a hard deadline, leaders still share the goal of sending a final bill to the President before his upcoming State of the Union address on January 27.

The Healthcare Reform Legislation that is ultimately adopted will affect all 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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