

NEWSSTAND

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

December 29, 2009

[Leslie J. Levinson](#), [Edward Eynon](#)

After a prolonged floor debate that kept Senators in session through weekends for 25 consecutive days, the Senate completed its work on healthcare reform legislation in the early morning hours on Christmas Eve. The vote on final passage of the Senate's bill – H.R. 3590 – came at 7:00 a.m., when it passed by a tally of 60-39.

As expected, all 60 members of the Democratic caucus voted in favor of the legislation – an exercise in party unity that allowed Senate leaders to overcome several procedural hurdles last week and move the bill toward final passage. Every present Republican voted against the measure, and Senator Jim Bunning (R-KY) was the only lawmaker absent for the historic vote.

KEY PROVISIONS:

As previously reported, the final compromise language in H.R. 3590 replaces the government-run public health insurance option with a new national network of privately run insurance plans that will be administered through the Office of Personnel Management – the federal agency that currently administers health benefits for federal employees.

In order to further expand coverage, the legislation also sets up health insurance “exchanges” that will function as marketplaces for those seeking insurance coverage, and provides subsidies for Americans who cannot afford coverage. H.R. 3590 also expands the Medicaid program to those with incomes up to 133 percent of the federal poverty level.

H.R. 3590 also contains a number of mandates on insurance companies, employers and individuals. Beginning in 2014, individuals will be required to have coverage and employers with more than 50 employees will be required to provide coverage. Failure to do so in both instances will result in a monetary penalty. Also beginning in 2014, health insurance companies will be barred from denying coverage based on pre-existing medical conditions.

With regard to abortion services, the Senate bill continues current federal funding restrictions, and states that no insurer will be required to cover the procedure. For those insurers that do cover abortion services, monthly premiums must be segregated in a way that will ensure no federal subsidies are used to pay for those services. In addition, those who seek insurance coverage for abortion will be required to pay one monthly premium for abortion and one monthly premium for all other medical coverage.

In order to pay for the legislation – which will cost nearly \$900 billion over 10 years – H.R. 3590 contains close to \$500 billion in cuts to the Medicare program, including provider reimbursement decreases and reductions to the privately-run Medicare Advantage program. The bill also contains new tax increases on high-cost health insurance plans, Medicare payroll tax increases for higher-earning individuals and new taxes on various sectors of the healthcare industry, such as pharmaceutical companies and medical device makers.

NEXT STEPS:

Now that the House and Senate have both passed comprehensive healthcare reform legislation, the process moves to its final step – reconciling the differences between the two bills during conference negotiations, in order to produce a final agreement that both chambers will be able to approve and send to President Obama’s desk in time for his upcoming State of the Union address.

The House does not formally reconvene until January 12, and the Senate will return to session the following week on January 20. Despite the recess, conference negotiations will begin in earnest next week, when key staff from House and Senate Committees with jurisdiction over healthcare issues return to Capitol Hill to begin hammering out final language in policy areas where there is general agreement.

At the same time, healthcare leaders in both the House and Senate will resume Member-level discussions on the more controversial items – such as the public option, abortion language and tax increases to pay for the overhaul. Those conversations are reportedly already taking place, and will increase in intensity as Representatives and Senators return to Washington, DC early in order to negotiate face-to-face.

Leaders are reluctant to speculate whether the State of the Union goal will be met, but given the narrow margins by which the House and Senate passed their respective bills, it is clear that conference negotiations will be difficult and will involve achieving a very delicate balance.

Edwards Angell Palmer & Dodge LLP is pleased to provide regular updates on issues affecting the Healthcare industry. Our lawyers not only provide sophisticated legal services to ensure that our clients are informed of government actions and initiatives.

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.

Les Levinson, Partner, Chair, Healthcare
Practice

212.912.2772

llevinson@eapdlaw.com

Teddy Eynon, Partner, Public Policy & Government
Relations

202.478.7379

teynon@eapdlaw.com