

## NEWSSTAND

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

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Healthcare reform efforts remained in flux last week, as President Obama sought to repackage his party's priorities in the wake of the shocking Republican victory in Massachusetts on January 19. Nevertheless, House and Senate leaders continued discussions on how to revive the stalled debate, though a specific path forward is anything but certain.

#### **STATE OF THE UNION:**

On Wednesday, the President's State of the Union address provided a convenient platform from which to introduce a recalibrated agenda. As expected, he spent the majority of his address focused on the ailing economy, calling job creation his "number one focus in 2010."

President Obama highlighted numerous economic and fiscal proposals aimed at saving and creating jobs while focusing on assistance to small businesses and the middle class. For example, he strongly urged Congress to pass a second jobs bill – an effort that the House approved in December and that the Senate is currently crafting.

In addition, the President stressed the need to act on a package of bills that would assist small businesses by taking unused financial bailout funds and directing them to community banks that would make loans to small businesses, and by enacting a tax credit for small businesses to hire workers. He also vowed to reduce the federal deficit by freezing domestic discretionary spending and through the creation of a deficit reduction commission whose recommendations would be presented to Congress for approval.

Despite the fact that the recent Senate election put a damper on many of Democrats' top priorities, the President also renewed his call to see Congress complete action on a comprehensive healthcare bill – though it by no means received top billing in his remarks and he did not offer a specific path forward on the beleaguered, politically sensitive issue.

#### **MANY OPTIONS, NO CONSENSUS:**

Democratic leaders met privately last week to discuss the options their party now has in moving forward on healthcare legislation. Strategies remain widely varied, ranging from a small, piecemeal approach to the revival of a comprehensive bill via the budget reconciliation process.

Even in the face of an increasingly grim outlook, House Speaker Nancy Pelosi (D-CA) renewed her Chamber's commitment to a comprehensive bill on Thursday. In reference to the completion

of the stalled legislation, the Speaker resolutely stated, “We’ll go through the gate. If the gate is closed, we’ll go over the fence. If the fence is too high, we’ll pole vault in. If that doesn’t work, we’ll parachute in. But we’re going to get healthcare reform passed for the American people.”

Despite this bold determination, the Speaker admitted that the House may have to start on a smaller scale. She announced that House Democrats will work to bring “sidebar” issues to the floor prior to the upcoming President’s Day recess, though she declined to elaborate on what issues would be included and whether the effort would consist of one piece of legislation or a package of bills.

Across the Capitol, Senate Majority Leader Harry Reid (D-NV) huddled with key Democrats on Thursday afternoon to map out their preferred strategy. The Majority Leader repeated his intention to revive healthcare reform efforts, though he admitted that Democrats have many potential procedural hurdles in their path.

Majority Leader Reid and other top Senate Democrats appear to be gravitating toward a strategy first unveiled immediately after the Massachusetts election in which the House would approve the Senate-passed bill (H.R. 3590) without any changes, sending it directly to the President’s desk and negating the need for another 60-vote victory in a Senate that will soon have only 59 Democrats. At the same time, the House and Senate would then need to employ the complicated and controversial budget reconciliation process in order to enact a package of amendments to the Senate bill that would only require 51 votes to pass the Senate and would alleviate current House concerns with H.R. 3590.

Though seemingly straightforward, the success of this scenario depends on a number of factors, including the complex rules that do not allow for policy provisions unrelated to revenues and entitlement program spending to be included in the reconciliation process. In addition, Democrats would have to contend with timing issues, given that the authority to use reconciliation is contained in the current FY 2010 budget, which will be supplanted by the FY 2011 budget, due in the spring. Finally, the fact that House Democrats are largely skeptical of such an approach must not be overlooked.

#### **NEXT STEPS:**

House and Senate leaders alike have hinted that some decisions may be made and action may occur before Congress breaks for its weeklong President’s Day recess in mid-February, though details are vague and the situation remains fluid. We continue to follow this process closely and will provide updates as notable developments occur.

***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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