

NEWSSTAND

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

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The Senate returned from Thanksgiving break last week and resumed consideration of its healthcare reform bill in earnest, debating and voting on several amendments to the legislation. However, despite slow but steady progress and a seven day work week, agreements on the more controversial aspects of the 2,000+ page bill remained elusive.

SENATE DEBATE PROGRESSES:

After nearly four days of debate, the Senate recorded its first amendment votes to its healthcare reform legislation – H.R. 3590 – on Thursday afternoon. Senators voted to approve an amendment that would eliminate co-pays for many preventive services for women, requiring instead that insurers provide full coverage for screenings and other related care. The amendment included language to ensure the U.S. Preventive Services Task Force’s recent mammogram recommendations are not used for health insurance coverage determinations.

The Senate also voted to reject an amendment offered by Republicans that would have stripped the nearly \$450 billion in Medicare cuts from the legislation. Republicans have made the Medicare cuts a key piece of their opposition strategy, insisting that seniors’ Medicare benefits will be negatively impacted by the spending cuts that will be used subsidize health insurance coverage for the non-elderly population. Two Democrats joined all 40 Republicans in supporting the measure, which was defeated by a vote of 42-58.

Democrats countered with an amendment – approved by all 100 Senators – that promises seniors that Medicare’s traditional benefits will not be reduced and that savings from reducing payments to Medicare providers would go toward improving the program. Additionally, Democrats point to the support of senior advocacy groups, such as the AARP, as proof that the Medicare cuts included in H.R. 3590 will not adversely affect seniors.

On Saturday, Democrats beat back another Republican attempt to strip Medicare cuts from H.R. 3590, this time defeating an amendment that would have removed more than \$42 billion in cuts to home health agencies from the bill by a vote of 41-53. Once again, Democrats countered with a unanimously approved amendment that stated that their healthcare reform bill should not reduce guaranteed home health benefits.

Two other amendments were rejected by the Senate on Sunday. A Democrat-sponsored amendment that would have limited tax deductions for executives’ salaries in the insurance industry was voted down by a vote of 42-56. In addition, a Republican effort to place limits on

the fees that attorneys representing plaintiffs receive in medical malpractice liability cases was soundly defeated by a vote of 32-66.

ROADBLOCKS REMAIN:

The inclusion of a government-run public health insurance option in the Senate bill remains a major concern for many moderate Democrats, despite Majority Leader Harry Reid's (D-NV) inclusion of an opt-out provision for states in H.R. 3590. As a result, Democratic leaders have been working on alternative proposals that will be able to attract the votes of all 60 members of their caucus – the number needed to prevent a filibuster and ultimately pass the legislation.

Over the weekend, general details of a compromise public option began to emerge, as a group of liberal and moderate Democrats came together to hash out an agreement that will satisfy both groups. Final details remain unclear, but it appears that the public option provision will be much different from the House-passed proposal, in that it would not be administered by the Department of Health and Human Services but instead by the Office of Personnel Management – the agency that currently runs the health insurance program for federal employees. In addition, the actual insurance coverage could be offered by entities completely separate from the federal government.

Senate leaders must contend with the controversial issue of abortion, as moderate Democrats continue to express the need for stronger restrictions to ensure federal dollars are not used to pay for elective abortions. In fact, one of the most pivotal Democrats in the debate, Senator Ben Nelson (D-NE), insisted last week that he will not vote to approve H.R. 3590 unless tighter restrictions are included. Such language could be a deal-breaker for more liberal Democrats, leaving Majority Leader Reid without a clear solution that will give him the 60 votes needed to pass the bill.

NEXT STEPS:

After a long weekend session, the Senate resumes its healthcare reform debate this week, with an expected amendment to tighten abortion restriction language offered by Senator Nelson and an amendment dealing with the reimportation of prescription drugs. In addition, further news is possible in regard to compromise language on the public option.

It is highly possible that the Senate will continue to work through the weekend in the final weeks leading up to the Christmas holiday, in an attempt to complete consideration of its bill this year. Further, Majority Leader Reid has stated that he may bring Senators back to Washington, DC during the week between Christmas and New Year's Eve, should they be unable to pass a bill before the holiday.

When speaking to reporters last week, the Majority Leader stated that his party would do its "very utmost" to complete work on healthcare reform before the end of the year. That said, he also acknowledged the fact that several outstanding issues must be resolved in order to pass the bill, namely the inclusion and scope of the public option.

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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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