

NEWSSTAND

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

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As the White House and Congress focused their attention on the release of President Obama's FY 2011 Budget and the new jobs agenda, healthcare reform efforts took a back seat last week. Despite the priority shift, off the record chatter and closed door meetings continued, as speculation grew over if and how Democrats would be able to revive their stalled priority in the coming months.

RECONCILIATION REMAINS IN PLAY:

With the swearing in of Senator Scott Brown (R-MA) as the chamber's 41st Republican, Senate Democrats officially ceded their 60 vote supermajority on Thursday. While no formal announcements were made on healthcare reform last week, the newly cemented political reality in the Senate serves as a reminder that the budget reconciliation process could well be employed if a comprehensive healthcare reform bill is to have any chance of reaching the President's desk this year.

As previously reported, resorting to reconciliation will allow Democrats to move legislation through the Senate under a complex procedural maneuver that requires only 51 votes for passage, as opposed to the ordinarily necessary 60 votes that Senate Majority Leader Harry Reid (D-NV) no longer has. Under this strategy, the House and Senate could agree to a series of changes to the Senate's already approved healthcare bill (H.R. 3590) and package them into a legislative vehicle that would move through both chambers under reconciliation rules. These guaranteed changes would then give skeptical House Democrats the comfort they need to pass H.R. 3590 as is and send it directly to President Obama, knowing that sufficient changes will be enacted via the reconciliation process.

Specific details are anything but certain and the White House has not taken an official position, but several recent reports have indicated that President Obama is privately pressing House and Senate leaders to complete action on healthcare reform by using this controversial tactic.

SMALLER BILLS ON DECK IN THE HOUSE:

As Democratic leaders continue to wrangle over a course of action on large-scale reform, the House will begin to move forward on its latest strategy – moving a series of smaller, popular healthcare measures in a piecemeal fashion. House Speaker Nancy Pelosi (D-CA) will bring up

the first of such efforts this week, and will presumably continue the process following the week-long President's Day recess that begins on Friday.

The proposed legislation set for floor consideration will remove longstanding antitrust exemptions for health insurance companies – a provision that was included in the House's original healthcare reform bill (H.R. 3962). The measure aims to bar the health insurance industry from price fixing and setting their own markets without being investigated, and the bill's sponsors – two Democrats who may face difficult reelection races in November – referred to their legislation as a “common priority.”

NEXT STEPS:

Some reports have suggested that major decisions on healthcare reform could come as early as this week, though the Senate's preoccupation with yet to be finalized job creation legislation indicates otherwise. Additionally, even the President admitted - in a statement that conflicted with his earlier push toward completion - that comprehensive healthcare reform legislation may never find its way out of Congress and to his desk. Nevertheless, we continue to monitor multiple sources of information as official discussions move forward and speculation continues on this fickle, complex process.

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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