Update on Health Care Reform – What can we expect?

By Laura Katz and Eli Levine

Back in June, we alerted you of legislative efforts to overhaul the nation’s health care system and the potential impact such reform would have on the insurance industry. In the last month, health care reform has taken center stage in Washington DC, with President Obama and Congressional leaders promising to devote nearly all of their efforts and attention toward moving legislation through the relevant committees in the House of Representatives and the Senate before the August Congressional Recess.

There has been a lively debate and discussion in Washington over exactly what health care reform will look like and there are still many issues to resolve before any legislation can be passed into law. America’s Health Insurance Plans—the private insurance industry’s main professional association—just launched a million dollar advertising campaign supporting a bipartisan fix to health care that insures everyone and eliminates denials based on preexisting conditions. The American Medical Association and the American College of Surgeons have come out in strong support of the House health care reform bill and the American Nurses Association has also been vocal in supporting the objectives of President Obama and Congressional Democrats.

However, many fiscally conservative Democrats and Republicans have raised strong concerns about the cost of such legislation, the impact of higher taxes on private industry and whether a public plan is necessary or appropriate. It is still not expected that health care reform will be passed as long as the funding of health care reform remains in question. The Congressional Budget Office has now estimated that health care reform will cost roughly one to one and a half trillion dollars over the next 10 years.
The Current Status of Legislation in Congress

Different components of health care reform legislation have been progressing concurrently through the two chambers of Congress. On July 14, 2009, the three relevant House committees released a comprehensive legislative package. The following day, the Senate Health, Education, Labor and Pensions (HELP) Committee voted to pass its component of the Senate’s health care reform legislation. Later that week, two House committees, Ways and Means and Education and Labor voted to pass the House health care reform legislation.

The House of Representatives
The House legislation, H.R. 3200, entitled the “America’s Affordable Health Choices Act of 2009,” would require that:

- All individuals are covered by insurance;
- All employers provide health insurance coverage for their employees or pay a penalty;
- Subsidies are provided for low-income individuals to help them obtain coverage; and
- Sweeping changes are made to Medicare.

The legislation calls for a surtax on individuals making over $250,000 and families making over $350,000, but Speaker Pelosi has been quoted as being amenable to limiting the surtax to millionaires. The House Ways and Means Committee chose to use a surtax instead of capping the income tax exclusion on employer-provided medical insurance coverage. With two of the three committees having jurisdiction over health care reform having passed the legislation out of committee, House Democratic leaders ideally wanted to pass the legislation before the August Congressional recess, though a delay is now fairly certain.

The Senate
The Senate HELP Committee passed on a party-line vote a $600-billion bill that also includes individual and employer mandates to expand coverage. By legislative procedure, the HELP bill deals only with areas of legislation over which the HELP Committee has jurisdiction and thus, did not address many of the important financing provisions. The Senate Finance Committee continues to negotiate and explore a range of possibilities and proposals on the revenue side but has yet to introduce formal legislation.

Areas of Health Care Reform Legislation That Would Have The Biggest Impact on Insurers:

Raising Revenue Through New Regulations on Private Insurance Companies
A bipartisan group of Senators on the Senate Finance Committee has voiced support for a plan to make private insurance companies pay as much as $100 billion of the ten-year cost of the health care overhaul sought by President Obama. Insurance companies have said that while they have agreed to accept many undesirable Congressional proposals, including eliminating their ability to deny coverage to individuals with preexisting conditions, they will actively oppose any proposal for insurers to pay significant amounts to accomplish health reform because it would undermine their efforts to provide affordable health insurance. Drug companies and the hospital sector have struck deals to contribute over $80 billion and $155 billion over a decade, respectively, to finance health care reform. It is contemplated that the financing from these industries would be achieved through additional taxes. Details on how such a tax would be structured are still uncertain but could be based on revenue or market share.

The Debate over the Public Plan
As discussed in previous Alerts, there has been considerable controversy over the government-run public insurance option program. H.R. 3200 contains a strong public option that will use Medicare's bargaining power to negotiate low drug prices and rates with providers. It provides for a 5% bonus for physicians who participate in Medicare and the public plan. Providers will not be required to participate but Medicare providers will be presumed to be participating unless they opt out.

The Senate continues to negotiate about the specifics of the public plan. The legislation passed out of the Senate HELP Committee recommends a public option that will compete on a level playing
field with private insurance companies and will be available only on the health insurance exchanges, as discussed below. The Senate Finance Committee will ultimately play a very large role in determining what the public option coming out of the Senate looks like and no agreement has yet been reached.

The Health Insurance Exchange
The Health Insurance Exchange is the marketplace where consumers can select the health plan that is right for them. The Exchange would list and detail all of the available insurance plans in an area and set the minimum benefits that insurers must provide. The Senate HELP bill gives authority to the Exchange to pick the insurers that can participate, provide information to consumers about the plans and handle complaints. The House proposal establishes a commissioner who would solicit bids from insurers wanting to participate and negotiate contracts with them.

All of the proposals before Congress would at least initially limit the exchange to uninsured individuals, those who purchase their own insurance, small businesses and certain employees with employer-provided insurance. There has been much debate and numerous legislative proposals about how strong to make the Exchange and how fast to open it up to large employers. Lawmakers have not settled on the size of exchanges: a Senate proposal specifies state-based exchanges, while the House plan calls for a national model with an option for state-based programs.

The structure of the Health Insurance Exchange will greatly impact the country’s health care system. Supporters say a strong health exchange will lower costs, provide more options and standardize benefits through competition. Critics fear a strong exchange will drive up costs and encourage employers to drop coverage as the healthiest workers would leave employers’ plans to buy their own individual, cheaper, insurance.

Subsidies, Medicaid and the Minimum Benefit Package
There are many critical issues beyond the debate over the public plan and the Exchange. For example, there is the issue of subsidies for the poor. Both the Senate HELP and the House Tri-Committee legislation include subsidies for people making up to 400 percent of the federal poverty level, or $88,200 for a family of four, to enroll through the Exchange. How much assistance is given to the poor, and whether or not they will be able to afford it, are critical issues given the individual mandate.

There have been ongoing discussions over the best way to cover the poor and uninsured and how large a role Medicaid should play. Medicaid, the state-federal partnership for the poor and disabled, which currently covers 60 million people, could add more than one-third of the 46 million currently uninsured to its recipient population, as a result of health care reform. The House Tri-Committee bill would raise eligibility for Medicaid to 133 percent of the poverty level for individuals and families. The Senate HELP bill raises Medicaid eligibility for all individuals to 150 percent of the poverty level, or $31,800, for a family of four.

The Senate Finance Committee is still negotiating to develop a legislative compromise. It may propose that the federal government foot the bill for the first few years of the program and then share the burden with the states. The House bill has the federal government covering the entire cost of the expansion, as well as the cost of increased reimbursement rates for primary care physicians and practitioners. The final price tag has yet to be worked out and will depend on the extent of the Medicaid expansion and whether Congress increases reimbursement rates to ensure that doctors and other providers treat Medicaid patients.

Opponents of these proposals argue that Medicaid already has wreaked havoc on states’ budgets and that it would not be prudent to expand such a program with millions of new enrollees. Also, with many northern states already having expanded their programs to the levels being debated by Congress, the impact of this legislation would vary in different parts of the country, and on a state-by-state basis.

Another critical but often overlooked component of health care reform is the proposal for a minimum benefits package. The Senate HELP bill directs the Secretary of Health and Human Services to create a benefits package, which would include coverage of doctor and hospital care, prescription drugs and other services. Within this package, there would be at least three tiers of policies, based upon the percentage of medical costs that insurers would pay. At a minimum, insurers would pay 76 percent of benefit costs. The House bill creates a Health Benefits Advisory Council, led by the Surgeon General, to work with the Secretary of HHS to create a benefits package, which must cover at least 70 percent of expected medical costs.
Summary

The bills making their way through Congress contain some common features that build on the objectives advanced by President Obama. Although President Obama and Democratic Congressional leaders had hoped to have concrete legislation passed before the Congressional recess by the end of August, this deadline no longer appears realistic. In the coming weeks, it is expected that there will be greater focus on the details for delivering and financing health care reform and the legislative proposal that will be advanced by the Senate Finance Committee. It is believed that any health care reform legislation that would be passed by either chamber of Congress will be subject to modification in the Conference committee. We will keep you apprised of further developments.

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