

## **Possible Strategies to Move Health Care Reform Forward –**

January 27, 2010

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APhA Government Affairs

Several strategies have been discussed to move health care reform forward, including:

- Passing the Senate-passed legislation, H.R. 3590, “as-is” in the House of Representatives;
- Passing the Senate legislation, as noted above, with the House and Senate agreeing to modify certain provisions at a later date using the budget reconciliation process; and
- Starting anew and focusing on popular health care reform provisions in multiple bills.

*Option One - House Passage of the Senate Bill.* This method may be the best chance Congressional Democrats have of passing broad health reform. However, House Democrats are unlikely to pass the Senate bill as it currently stands and House Speaker Nancy Pelosi (D-CA) said earlier this week that she did not have the votes to pass the Senate bill. Many House Democrats, particularly those on the left, believe that the H.R. 3590 is inferior to House legislation and is a non-starter. The broad opposition to this option underscores the difficulty that House and Senate negotiators have faced since Senate passage of health reform.

*Option Two - House Passage of H.R. 3590 + Budget Reconciliation.* This option may offer the best chance for Democratic leaders to gain approval from Members in the House and Senate. Budget reconciliation would bypass the ability of Senate Republicans to filibuster legislation because reconciliation only requires a majority vote. However, reconciliation rules would likely prevent several important health care reform components (most notably, the insurance market reforms) from being adopted. Under reconciliation, each provision must have a direct effect on the budget or receive Senate consent (i.e., 60 votes) to waive these budgetary instructions. It is unlikely that Republicans will agree to waive budget reconciliation rules in order to advance a Democratic health care reform bill. Additionally, reconciliation permits endless votes on amendments, which could pose a political problem for Democrats. It is unlikely that senators will want to take difficult stances on controversial amendments given today’s political climate and the upcoming November elections.

*Option Three - Piecemeal Health Care Legislation.* This option could allow several smaller bills to move through Congress simultaneously, each addressing separate health care reform components (e.g., insurance market reforms, Medicare, creation of health insurance exchanges). Over the past few days, this idea has gained some traction on Capitol Hill and Representative Bill Pascrell (D-NJ) has been floating a proposal that would utilize this approach. Again, it is unclear if this approach would win a majority of Democratic support because it would necessitate the separation of connected reform provisions. For example, insurance market reforms require individual mandates, which in turn require affordability credits, which in turn require revenue raisers (i.e., tax increases or Medicare cuts). The difficulty in producing multiple bills, coupled with the lengthy timeframe, may render this option unobtainable.

For a more complete insight into what new legislation might include, a side-by-side comparison of the House and Senate bills may be accessed at the following link:

[http://www.sonnenschein.com/docs/Health\\_Care\\_Reform\\_Side-by-Side.pdf](http://www.sonnenschein.com/docs/Health_Care_Reform_Side-by-Side.pdf).

**Medicare Physician Fee Schedule:** The Medicare physician fee schedule will be reduced by 21.2% on March 1 absent Congressional action. It is unclear how Congress will address the SGR in light of the Massachusetts election and newfound uncertainty regarding health care reform.

### **White House**

As noted above, President Obama will deliver his first official State of the Union Address on Wednesday. In this address, the President will likely outline how he wants Congress to proceed on health care reform.

As the State of the Union draws nearer, we expect Congressional Democrats to move closer to agreement regarding health care reform strategy.

### **Centers for Medicare and Medicaid Services (CMS)**

President Obama has not nominated a CMS Administrator and many other high-level positions at the agency remain unfilled or temporarily staffed by acting personnel. We expect a nomination to be made after the conclusion of the health care reform debate. At this point, the leading candidate for CMS Administrator appears to be Dr. Donald Berwick, President and CEO of the Institute for Healthcare Improvement. Berwick is a well-recognized and renowned expert on health care quality. The leading candidate for CMS Deputy Administrator appears to be Marilyn Tavenner, the current Secretary of Health and Human Services for the Commonwealth of Virginia.