



Health Care Reform Takes Center Stage

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Innovative Employee Benefits Solutions

Overview

- The Landscape Today
- The Gateway / Exchange & Individual Mandate
- "Essential Benefits" & Insurance Market Reforms
- Public Plan Option
- Employer Mandates
- Revenue Raisers
- On the Horizon

The Landscape Today

House of Representatives

- 3 separate Committee mark-ups
- Leadership and Rules Committee to pull together 3 separate bills for floor vote. Must address concerns of:
 - Blue Dog Caucus
 - Progressive/Liberal members
- Timing of House floor action?

The Landscape Today

Senate

- HELP Committee bill
- Finance Committee bill
- Procedural road blocks to Senate vote
 - Possible Republican filibuster
 - Need 60 votes to overcome filibuster
 - Structure as budget reconciliation bill
 - Needs only 50 votes – no Republicans needed

The Landscape Today

- Public reaction during August recess
 - Town hall meetings
 - Falling poll numbers for Administration
- Obama's September 9 address to Congress intended to unify Democrats and retake health care reform agenda
 - Focus on insurance reforms
 - Public plan
 - Deficit neutral

The Gateway/Exchange

- Mechanisms that facilitate purchase of health insurance coverage that satisfies requirements for affordability and quality
- Key issue: State vs. Federal/ How regulatory?
- Senate HELP = Gateway
 - Primarily state-based
 - Created through an amendment to the Public Health Service Act
 - Governed by the Secretary of HHS, who works with the National Association of Insurance Commissioners ("NAIC") to establish the federal requirements
 - Available to "Qualified Individuals" who are not eligible for other coverage
 - Federal Credits for up to 400% of poverty level
 - Plans must be certified, provide essential health benefits (as determined by New Medical Advisory Council) and satisfy other consumer protection requirements



Gateway/Exchange

- Senate Finance Bill = Exchange
 - Primarily state based; states are required to establish exchanges.
 - Governed by the states and the Secretary of HHS.
 - Beginning in 2013, licensed insurers in the individual and small group markets must make product available through Exchange.
 - Federal credits for up to 400% of poverty level.
 - State insurance commissioner would review plans and set criteria for determining whether a plan is available for sale.
 - All plans must include Federally established baseline benefits.
 - States could create local or regional (interstate) exchanges with HHS approval.

Gateway/Exchange

- House Bill = Exchange
 - Federally-based
 - Governed by "Health Choices Administration," a new, independent Federal agency.
 - All individuals are eligible unless they are enrolled in a "qualified health benefits plan" or other "acceptable coverage."
 - Federal Credits for up to 400% of poverty level.
 - Plans must meet the requirements to be a "Qualified Health Benefits Plan," which includes affordable coverage, essential benefits and consumer protection standards.

Individual Mandate

- Internal Revenue Code sec. 59B: individuals who do not participate in coverage that satisfies the minimum requirements must pay additional taxes, with certain exceptions
 - House Bill: Code sec. 59B tax= 2.5% of the excess of the taxpayer's modified adjusted gross income over the return filing income threshold.
 - Senate HELP: Code sec. 59B tax determined annually by IRS/HHS; may not be less than 50 percent of the average annual premium under the "basic plan" for the preceding calendar year.
 - Senate Finance: Excise tax of \$750 per adult per household; penalty is not criminal and does not accrue interest.
- Key issue – is the individual mandate strong enough?

"Essential" Benefits

- Applies to insured & self-funded benefits
- No pre-existing condition exclusions
- No annual & lifetime caps
- Preventive care and immunizations without cost-sharing
- Extension of mental health parity to individual and small group markets
- Cost-sharing limits

"Essential" Benefits

(General categories, varies somewhat by bill)

- Hospitalization
- Outpatient hospital & clinic
- Physician services
- Services, equipment, & supplies incident to care
- Prescription drugs
- Rehabilitative & habilitative services
- Mental health & substance use disorder services
- Preventive services & vaccines
- Maternity benefits
- Well baby & child care
- Oral, vision, health, & hearing services, equipment, & supplies for children under 21

Insurance Market Reforms

Insured Benefits

- Guaranteed Issue / Renewability
 - Applies to large group market, as well as individual and small group markets (House & Senate HELP).
 - Senate Finance appears to apply only to individual and small group market.
- Rating Limits
 - Insurers only may vary premium based on age, geographic area, and family structure.
 - House - applies to individual, small, and large group markets.
 - Senate HELP & Finance - applies to individual and small group markets only.
 - Could increase cost for individual and group insurance.

Insurance Market Reforms

Insured Benefits

- Individual Policies only may be sold through the Exchange (House).
- State law remedies allowed for insured benefits obtained through Exchange (even with respect to employer coverage) (House).
- Uninsured individuals due to preexisting conditions may enroll in high risk pool (Senate Finance).
- NAIC to issue minimum federal standards on rating, issuance, and marketing (Senate Finance).

Insurance Market Reforms

Insured & Self-Funded Benefits

- Uniform COB and subrogation standards to be set by Health Choices Commissioner (House).
- Prompt pay rules similar to Medicare Advantage (House).
- Must provide COBRA until individual becomes eligible for other employment-based coverage or becomes eligible for Exchange, whichever is earlier (House).

Insurance Market Reforms

Insured & Self-Funded Benefits

- External review that is binding on plans (House).*
- Must provide advance notice of plan changes (House).*
- Must cover dependents to age 26 (Senate HELP).

** Applicable to Exchange plans and to self-funded if Health Choices Commissioner determines.*

"Grandfathered" Group Plans

- House
 - Existing employment-based group plans grandfathered for 5 years, starting January 2013.
- Senate Finance
 - Existing plans grandfathered, but rating rules phased in for small group market over 5-year period beginning July 2013.
- Senate HELP
 - Existing group plans grandfathered indefinitely, as long as not "modified to a significant extent."

Public Plan Option

- The federal government will contract with entities to administer the option, but no risk will be transferred to the contracting entity.
- Critics say:
 - Difficult for insurers to compete because of uneven playing field.
 - Physicians and hospitals may lose money, as the reimbursement rates may be lower under both of options, and they may attempt to recover these losses by charging higher rates to non-public plans.

Public Plan Option *House*

- Called "Public Health Insurance Option"
 - Looks like Medicare in many ways (e.g., reimbursement rates for providers will be the same as Medicare, with allowances for geographic variations).
 - Required to comply with the requirements that are applicable to all Exchange-participating health benefit plans.
 - Will offer at least three levels of coverage.

Public Plan Option

Senate HELP

- Called "Community Health Insurance Option"
 - Still looks a lot like Medicare, but includes provisions to try to mitigate criticisms that were made about the public plan option.
 - Premiums must cover costs.
 - Rates for provider reimbursement shall be negotiated by HHS.
 - Consumer protection laws of a state shall apply.
 - Start-up funds allocated to a federal trust fund must be repaid within 10 years.

Public Plan Option

Senate HELP

- Coverage only for the "essential health benefits" required to be provided by all Gateway plans.
 - States will have flexibility to enhance coverage.
 - Secretary of HHS will work with the NAIC to establish requirements.
 - Administrator must be a non-profit entity.
- Community Health Insurance Option would still enjoy significant advantage over private health insurance (immunity from law suits, taxes, most state insurance laws).

Public Plan Option

Senate Finance

- No provision for a public option, but:
- State based plan
 - Waivered opt out beginning in 2015 would allow states to implement a state based public option or single-payer system if affordability and coverage minimums and Federal budget neutrality are maintained.
 - States would receive 85% of the funds that they would otherwise receive from credits.
- State based Co-Ops
 - Consumer Operated and Oriented Plan – States can allow the formation of non-profit, member-run insurance companies that could receive Federal start-up funds if certain conditions are met.

Employer Mandates

- All bills have some element of "pay or play" structure (similar to Massachusetts)
- Minimum coverage levels
- Minimum premium contributions
- Small employer exceptions

Employer Mandates

House

- Minimum Coverage
 - Employer must elect whether to offer minimum coverage. If does not elect or substantially comply, subject to excise tax of 8% of wages.
 - Also subject to \$100 per day penalty for noncompliance.
- Minimum Premium
 - For full-time employees, must contribute at least 72.5% for individual / 65% for family of contributions for lowest cost plan that meets essential benefits package (for part-time employees, must contribute proportionate amount).

Employer Mandates

Senate HELP

- Minimum Coverage
 - Must offer qualifying coverage or pay \$750 per full-time worker, \$375 per part-time worker.
- Minimum Premium Contribution
 - Must contribute at least 60% of monthly premiums.

Employer Mandates

Senate Finance

- Minimum Coverage
 - Employer must pay fee (determined by HHS annually) for any employee who receives tax credit and is covered by Exchange. Tax credit available if employer coverage costs 10% or more of income or has actuarial value of less than 65%.
 - Fee is lesser of: amount set by HHS times number of employees receiving credit, or \$400 times all employees.
- Minimum Premium Contribution
 - Must offer coverage that is less than 10% of employee income (or subject to fee above).

Employer Mandates

Offering Exchange/Gateway Coverage?

- House
 - Employer may offer Exchange coverage on phased-in basis.
 - In Year 1 (2013), only employers with 10 or fewer employees may offer.
 - In Year 2, employers with 20 or fewer employees may offer.
 - In Year 3 and later, all employers may offer, as determined by Health Choices Commissioner.
- Senate HELP
 - Employer may offer Gateway coverage as long as it meets state requirements, including with respect to size.
- Senate Finance
 - Small employers may offer Exchange coverage beginning in 2015. States may allow large employers to offer Exchange coverage beginning in 2017.

Employer Mandates

If Employee Chooses Exchange ...

- House
 - If employee declines employer coverage in favor of Exchange, employer must contribute 8% of that employee's wages to Exchange.
- Senate HELP
 - No provision (but employees eligible for employer coverage not eligible for Gateway).
- Senate Finance
 - No provision (appears that employees are free to migrate to Exchange).

Employer Mandates

Small Employers

- House
 - Generally exempts small businesses with payroll under \$250,000.
 - Provides 50% phased credit for cost of qualified employer health coverage for small employers with less than \$400,000 in average annual wages. Applies to insured or self-funded benefits.
- Senate HELP
 - Generally exempts small employers with 25 employees or less.
 - Provides a credit, based on flat dollar amount per participant, to small employers with 50 or fewer employees who provided qualified coverage. Appears to limit to insured coverage only.
- Senate Finance
 - Generally exempts employers with 50 or fewer employees.
 - Provides a phased credit, based on employer contribution amount, for employers with less than 25 employees and whose average wage is no more than \$40,000.

Employer Mandates

Retirees

- Anti-Reduction (House, Ed & Labor amendment)
 - Plans may not reduce retiree benefits unless parallel reductions made for actives.
- Retiree Reinsurance (House & Senate HELP)
 - HHS to establish temporary retiree reinsurance program for employer plans.
 - Would reimburse employers for 80% of claims amounts between \$15,000 - \$90,000 by retirees aged 55 and older, where not eligible for Medicare.
 - Reimbursement must be used to lower participant costs, not employer costs.

Wellness Programs *House*

- Requires the Labor Secretary to award grants to employers that have enacted a certified wellness program that includes:
 - Health awareness
 - Employee engagement
 - Behavioral change
 - Supportive employee components
- Grant can be no more than 50% of the costs incurred

Wellness Programs

Senate HELP

- Must be designed to promote health benefit or prevent disease and be available to all similarly situated individuals.
- Wellness programs that condition a reward or rebate on satisfying a health status are only available in limited circumstances.
- Allows for a maximum of 30% premium deduction as a reward (50% at HHS's discretion).
- Other acceptable awards include fitness center memberships, diagnostic testing, waiving copayments for preventative care, smoking cessation programs, and health education seminars.
- Directs the CDC to promote and facilitate the creation and administration of wellness programs.

Wellness Programs

Senate Finance

- Provides \$200 million to HHS for grants to small businesses.
- Enhances HIPAA's non-discrimination regulations which allow rewards to be provided to employees for participation in or meeting certain health standards.
- Reward capped at 30% of employee only coverage (HHS, DOL, and Treasury have discretion to raise limit to 50%).
- Rewards must be made available for individuals who cannot achieve goals due to it being "unreasonably difficult" or "medically inadvisable."
- Reward may be discount or rebate of a premium or contribution, waiver of all or part of cost sharing, absence of surcharges, or value of a benefit that would not otherwise be provided by the plan.

Revenue Raisers

House

- Surtax on High Income Individuals
 - Applies to married individuals (filing a joint return) with income above \$350,000.
 - Political pressure to increase income thresholds or even drop surtax as a raiser.
- Over-the-counter ("OTC") drugs cannot be reimbursed from FSA, HRA or HSA effective 1/1/10
- Other corporate tax provisions
- Consolidated House bill may use many of Senate Finance revenue raisers

Revenue Raisers

Senate Finance

- 35% Excise Tax on High Cost Health Plan
 - High cost = \$8,000/single; \$21,000/family
 - Tax imposed on amounts in excess of limit
 - Limits may be indexed based on CPI plus 1% (not medical inflation)
 - Applies to insured and self-insured health plans
 - Tax imposed on insurers and insurance administrators
 - Unclear who is administrator of self-insured plan
 - FSAs, HRAs, dental, and vision plans are included (LTC, Disability & Fixed Indemnity Plans paid with after tax dollars are not)
- W-2 reporting of value of health benefits

Revenue Raisers

Senate Finance

- FSAs limited to \$2,500
- OTC drugs cannot be reimbursed from FSA, HRA or HSA
 - Exception if OTC drug is with a prescription - unclear how this exception would operate
- Increase penalty tax on distributions from HSA that are not used for qualifying medical expenses from 10% to 20% of the distribution
- Employer Medicare Part D subsidy for retiree prescription drugs to be taxable

Revenue Raisers

Senate Finance

- New fees on health care companies beginning in 2010
 - Pharmaceutical manufacturing companies (\$2.3 billion)
 - Medical device manufacturers (\$4 billion)
 - Health insurance companies (\$6.7 billion)
- Fee is allocated based on market share
 - Will fee be passed on to consumers as higher health care costs?
- Itemized deduction for medical expenses
 - Floor for claiming goes from 7.5% to 10% of AGI

On the Horizon . . .

- Unlikely that many Republicans will vote for bill
- Look for action over next few weeks
 - Tremendous pressure on Democrats to pass some form of health care reform legislation this year
 - Public plan option is most controversial and therefore may be eliminated or limited in final bill

Questions?

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