



WASHINGTON UPDATE

- **Senate Finance Completes Consideration of Amendments**
- **Joint Economic Committee Republicans Release Paper on Health Reform Tax Proposals**
- **More Detail on Senate Finance Amendments – Approved, Withdrawn and Defeated Amendments**

The Senate Finance Committee completed the markup of "America's Healthy Future Act" last week after debating more than 140 amendments over a seven-day period. A revised legislative text, incorporating the amendment changes is available on the Senate Finance Committee website at <http://finance.senate.gov>.

The committee will vote this week on passage of the bill after the Congressional Budget Office (CBO) releases a cost estimate for the amended bill. As of the time of this update, the CBO score was not yet available. Chairman Baucus indicated that if there are issues with the new CBO score, the committee may need to revisit some of the modifications. Key developments in the markup this week include the approval of an amendment that significantly weakened the individual coverage requirement and the defeat of two amendments that proposed adding a government-run plan to the bill. We can anticipate that sponsors of a government-run plan will continue to make an effort to add these provisions when the bill is brought to the Senate floor.

The committee also defeated an effort to strike the proposed industry tax on health insurance plans. Amendments that were approved include proposals to allow state-sponsored "basic health plans" for low-income persons and to allow premium variations based on an individual's participation in wellness programs. An amendment on medical loss ratios was debated and withdrawn without receiving a vote. These and many other key amendments are discussed below.

At the next stage of the legislative process, Senate leaders will merge the Senate Finance Committee bill with the Senate HELP Committee bill to produce a single bill for Senate floor action. Senate Majority Leader Harry Reid (D-NV) has suggested that the Senate floor debate could begin during the week of October 12. In previous years, the Senate has taken a recess around Columbus Day, but will not do so this year because of the heavy legislative agenda. The Senate and House will work to get a bill out just before the Thanksgiving recess.

Although there are a number of important areas that need to be improved in the bill in order for the overall structure to work – key areas of focus include the government-run plan and any surrogates of this process, insurance industry fees, the individual mandate, age rating changes, actuarial value of benefits and medical loss ratios, the role of exchanges, and the Secretary's authority to define benefits.

Joint Economic Committee Republicans Release Paper on Health Reform Tax Proposals

Republicans on the Joint Economic Committee released a paper this week, examining the impact of tax proposals in the Senate Finance Committee's health reform bill.

The paper focuses on provisions of the "America's Healthy Future Act" that would establish a high-cost health plan tax and impose limits on contributions to flexible spending arrangements (FSAs). The paper includes the following findings:

- All plans eventually would be subject to the 40 percent excise tax on high-cost health plans because it is not indexed to premium inflation.
- The proposed tax rate of 40 percent could translate into an effective tax rate of 67 percent, because the higher premiums resulting from the tax also would be taxed.
- The \$2,500 cap on FSA contributions would result in an immediate tax increase for those who currently contribute more than the cap (e.g., a family with a taxable income of \$66,000 that currently contributes \$5,000 to a FSA would face a federal income tax increase of \$625 and a payroll tax increase of \$191).

The JEC paper, "The Tax Man Cometh – Taxing Health Insurance Plans," can be found at the following link: http://jec.senate.gov/republicans/public/_files/TheTaxManComethSeptember302009.pdf

More Detail on Senate Finance Amendments

The second week of the health reform markup in the Senate Finance Committee included action on more than 80 amendments addressing topics such as a government-run plan, the individual coverage requirement, taxes, medical loss ratios, actuarial values, Medicare Advantage payments, Medicaid, and wellness programs. The following is an overview of key amendments the committee debated this week during its deliberations over the "America's Healthy Future Act."

Amendments Approved:

- **Individual Coverage Requirement:** By a vote of 22 to 1, the committee approved an amendment by Senators Charles Schumer (D-NY) and Olympia Snowe (R-ME) that would delay and significantly reduce the penalty for noncompliance with the individual coverage requirement. The penalty would be waived in 2013 and would be established at a level of \$200 in 2014, \$400 in 2015, \$600 in 2016, and \$750 in 2017. The amendment also would change the affordability threshold – from 10% to 8% (premiums as a percentage of income) – for determining whether persons are exempt from the individual coverage requirement.
- **Wellness Programs:** By a vote of 19 to 3, the committee approved an amendment by Senators John Ensign (R-NV) and Tom Carper (D-DE) that would allow health insurance plans in the individual and group markets to vary insurance premiums, providing a reward of up to 30 percent of the employee-paid premium, based on an individual or an employee's participation in wellness programs.

- Basic Health Plan: By a vote of 12 to 11, the committee approved an amendment by Senator Maria Cantwell (D-WA) that would provide federal funding for state-sponsored "basic health plans" to provide coverage to individuals between 133% and 200% of the federal poverty level.
- Medicare Advantage: By voice vote, the committee approved an amendment by Senator Ron Wyden (D-OR) that would modify bonus payments to Medicare Advantage plans that are determined to be "high quality plans" based on their ranking on a five star rating system, while also changing the parameters for grandfathered plans.
- CHIP: By a vote of 13 to 9, the committee approved an amendment by Senator Jay Rockefeller (D-WV) that would maintain the existing structure for the Children's Health Insurance Program (CHIP), instead of covering current CHIP enrollees through the Exchanges. This amendment also would allow CHIP-eligible children who cannot enroll in CHIP due to federal allotment caps to receive tax credits through the Exchanges.
- Deduction of Itemized Medical Expenses: By a vote of 14 to 9, the committee approved an amendment by Senator Bill Nelson (D-FL) that would carve out seniors from the proposed 10% threshold for determining the tax deductibility of itemized medical expenses.
- Medicaid MOE: By voice vote, the committee adopted an amendment by Senators Charles Grassley (R-IA) and Olympia Snowe (R-ME) that would modify the bill's "maintenance of effort" requirement for state Medicaid programs, applying it only to enrollees with income levels up to 133 percent of the federal poverty level beginning in 2011.
- Coverage of Emergency Services: By voice vote, the committee approved an amendment by Senator Robert Menendez (D-NJ) that would require health insurance plans to provide coverage for emergency services without regard to prior authorization or the provider's contractual relationship with the plan. Plans also would be prohibited from charging higher co-payments or cost-sharing for emergency services furnished by out-of-network providers.
- Executive Compensation: By a vote of 14 to 8, the committee approved an amendment by Senator Blanche Lincoln (D-AR) that would limit – to \$500,000 per individual – the amount of executive compensation that can be deducted as a business expense.

Amendments Withdrawn:

- Medical Loss Ratios: Senator Jay Rockefeller (D-WV) offered an amendment that would have required health insurance plans to demonstrate to the HHS Secretary that they spend 85% of premium dollars on medical care. After a lengthy debate on this issue, Rockefeller withdrew the amendment without requesting a roll call vote.
- High-Cost Health Plan Tax: Senator John Kerry (D-MA) offered an amendment that proposed changes to the high cost health plan tax, including increasing the premium thresholds. Kerry withdrew this amendment after Chairman Baucus indicated that he would work with him to revise this provision before the bill goes to the Senate floor. Senators Stabenow and Schumer also expressed concern about the impact of this proposed tax.

- "Free Choice": Senator Ron Wyden (D-OR) offered an amendment – which he later withdrew – that proposed a "Free Choice" system under which workers could choose any plan available through the Exchanges and, to help pay for this plan, receive a voucher equal to the amount their employer currently contributes to their coverage.

Amendments Defeated:

- Government-Run Plan: By a vote of 15 to 8, the committee defeated an amendment by Senator Jay Rockefeller (D-WV) that proposed a government-run plan that would have used Medicare payment rates during the first two years. Five Democrats – Baucus, Carper, Conrad, Lincoln, and Nelson – joined ten Republicans in voting against this amendment.
- Government-Run Plan: By a vote of 13 to 10, the committee defeated an amendment by Senator Charles Schumer (D-NY) that proposed a government-run plan that would have used "negotiated reimbursement rates." This amendment also would have prohibited the federal government from compelling providers to participate in the government plan. Three Democrats – Baucus, Conrad, and Lincoln – joined ten Republicans in voting against this amendment.
- Industry Tax on Health Plans: By a vote of 14 to 9, the committee defeated an amendment by Senator Jon Kyl (R-AZ) that would have eliminated the industry tax on health insurance plans.
- High-Cost Health Plan Tax: By a vote of 12 to 11, the committee defeated an amendment by Senator John Ensign (R-NV) that would have used the medical CPI, instead of the general CPI, for indexing the premium thresholds for the proposed high-cost health plan tax.
- Actuarial Values: By a vote of 12 to 11, the committee defeated an amendment by Senator Mike Enzi (R-WY) that would have reduced the actuarial value of the lowest cost benefit package from 65 percent to 60 percent.
- Individual Coverage Requirement: By a vote of 13 to 10, the committee defeated an amendment by Senator Charles Grassley (R-IA) that would have allowed states to opt out of the individual coverage requirement, while also requiring states to have a plan for improving individual health insurance coverage and providing federal subsidies to states based on their success in improving coverage.
- "Young Invincibles" Policy: By a vote of 14 to 9, the committee defeated an amendment by Senator Jim Bunning (R-KY) that would have allowed persons of any age to choose the "young invincibles" policy that would be established by the pending bill.

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