health reform matters™ alert

ROPES & GRAY

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House of Representatives Clears Senate Health Reform Bill for President's Signature; Approves Separate Package of Amendments for Senate's Consideration

In a highly anticipated and historic vote on Sunday, March 21, the U.S. House of Representatives adopted comprehensive health reform legislation. House approval was accomplished in two steps. First, the House approved the underlying Senate bill, the Patient Protection and Affordable Care Act (H.R. 3590), by a vote of 219 to 212. Then, by a vote of 220 to 211, the House approved the Health Care and Education Reconciliation Act (H.R. 4872) (the "Reconciliation Act")[1], a package of changes to the Senate-approved health bill. The Senate is now expected to consider the Reconciliation Act under an expedited procedure this week.

For details on the changes adopted in the Reconciliation Act, refer to Ropes & Gray's newly updated side-by-side chart that compares the original Senate bill (approved by the House yesterday), the Senate bill as amended by the Reconciliation Act (also approved by the House yesterday), and the House health reform bill (H.R. 3962) (approved by the House last November). Our Health Reform Resource Center also contains the full text and official summaries of all legislation, the Congressional Budget Office (CBO) reports, including the CBO's evaluation of the Reconciliation Act's cost and impact on coverage, and other relevant information.

Although the Reconciliation Act retains the overall structure of the Senate bill, including the creation of state-based health insurance exchanges and the requirement that all individuals obtain coverage, the legislation makes the following significant modifications to the Senate bill:

- **Individual Mandate**. Alters the penalty applied to individuals who do not purchase insurance, reducing it for lower-income individuals and increasing it for higher-income individuals, to make the mandate more progressive.
- **Individual Subsidies.** Increases the premium and cost-sharing tax credits for individuals with incomes up to 400% of the federal poverty level.
- **Employer Obligations.** Increases to $2000 per year ($166.66 per month) per full-time employee the penalty for large employers who do not offer coverage and have at least one-full time employee who receives a premium tax credit. Large employers that offer coverage will pay a $3000 per year ($250.00 per month) per employee penalty for each full-time employee that receives a premium tax credit. In calculating these penalties, the bill subtracts 30 workers from the size of a large employer's workforce.
- **Insurance Reforms.** Extends certain insurance reforms to existing health insurance plans, including prohibitions on lifetime limits, rescissions, and limitations on excessive waiting periods, and extends the requirement to provide coverage for non-dependent children up to age 26 to all existing health plans, starting 6 months after enactment.
- **"Cadillac Plan" Excise Tax.** Reduces revenue from excise tax by 80% by delaying implementation of the so-called "Cadillac plan" tax until 2018 (compared to 2013 in the Senate bill) and by increasing the value of the plans subject to the tax to $10,200 and $27,500 for individual and family coverage, respectively. The bill also excludes dental and vision care from the tax.
- **Medicaid Expansion.** Removes the provision under which Nebraska would have received a 100% federal medical assistance percentage (FMAP) for newly eligible Medicaid recipients. Instead, the bill provides 100% FMAP to all states

[1] The House also adopted an amendment to the Reconciliation Act, which is available here.

for newly enrolled Medicaid recipients from 2014-2016, to be phased down to 90% FMAP in 2020 and subsequent years. The bill also provides an increased FMAP to states that previously expanded their Medicaid programs, until all payments to states are equalized by 2020.

- **Medicaid Payment.** Requires Medicaid payment rates for primary care physicians to be no less than 100% of reimbursement for Medicare in 2013 and 2014, and provides 100% FMAP to assist states to pay for these increased rates.
- **Disproportionate Share Hospital (DSH) Payments.** Reduces DSH payment cuts to $21.4 billion for Medicare (down by $3 billion from the Senate plan), and reduces DSH cuts to $14.1 billion for Medicaid (down by $4.4 billion).
- **Market Basket Updates.** Imposes an additional $9.9 billion in market basket reductions for inpatient hospitals, long-term care hospitals, inpatient rehabilitation facilities, psychiatric hospitals, and outpatient hospitals for a total reduction of $157 billion.
- **Geographic Disparities.** In a last minute Manager's Amendment, the bill provides $400 million per year for two years for hospitals in geographic regions in which Medicare spending is in the lowest quartile.
- **Medicare Advantage.** Reduces Medicare Advantage payments by an additional $13.7 billion (for a total reduction of $132 billion) beginning in 2011, by setting payments at varying percentages of Medicare fee-for-service levels and granting CMS the authority to adjust risk scores for observed differences in coding patterns as compared to fee-for-service. Repeals language from Senate bill that would have established competitive bidding process in order for insurers to offer Medicare coverage.
- **Medicare Part D.** Closes the Medicare Part D "donut hole" by 2020, and provides a one-time rebate of $250 to those who reach the donut hole in 2010.
- **340B.** Removes Senate language that would have extended the 340B drug rebate program to the hospital inpatient setting, and exempts orphan drugs from the 340B outpatient drug discount program for children's hospitals, cancer hospitals, critical access hospitals, rural referral centers, and sole community hospitals, which are newly eligible for the program under the Senate bill.
- **Industry Fees.** Modifies and delays the start date of fees for the insurance, pharmaceutical, and device manufacturer fees until 2014, 2011, and 2013, respectively.
- **Unearned Income Medicare Contribution by High-Income Earners.** Imposes a 3.8% surtax on the lesser of net investment income or the excess of modified adjusted gross income over $200,000 for individual filers, $125,000 for married filing separate filers, and $250,000 for joint filers. This tax is in addition to the 0.9% increase in the hospital insurance tax on wages or self-employment income above $200,000, $125,000, and $250,000 for individual filers, married filing separate filers, and married filing joint return filers, respectively.
- **Fraud, Waste, and Abuse.** Adds new provisions to fight Medicare and Medicaid fraud, waste, and abuse, including additional Medicare prepayment reviews and increased funding for the Health Care Fraud and Abuse Control Fund.
- **Economic Substance Doctrine.** Codifies the economic substance doctrine and treats a transaction as having economic substance if the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction. Imposes additional penalties on transactions that lack economic substance.

For more information on the Reconciliation Act and health reform in general, contact your regular Ropes & Gray lawyer.