

# Legislative Brief

## National Health Care Reform October 30th Update



### House Version Released

Speaker of the House Nancy Pelosi (D-CA) released a revised version of health care reform legislation on Thursday. The 1,990-page measure, now known as H.R. 3962, includes a government-run public plan option to be offered through a national health insurance exchange that would negotiate rates with providers. However, the plan would initially be financed with public money and would not have to pay taxes and maintain solvency standards like private insurers. The Congressional Budget Office has provided a preliminary estimate that the bill will cost \$894 billion over a 10-year period. The Joint Committee on Taxation has also prepared a fiscal analysis.

### Highlighted aspects of the new bill include:

Market reforms that include modified community rating for all groups that do not self-fund limited to age bands of 2:1, geography and family composition. In addition, all such plans will be guaranteed issue, no preexisting condition limitations, out-of-pocket caps at \$5,000/\$10,000 and no lifetime or annual limits. Individuals that keep their exact same policy with no changes at all can be grandfathered indefinitely, but group coverage must convert to the new standards within five years.

A mandate requiring employers to pay 72.5% of the cost of acceptable coverage for individuals and 65% for family coverage, and part-time employees must be covered on a prorated basis based on average hours worked. In lieu of paying for coverage, the measure creates a “pay or play” option allowing the employer to pay eight percent of wages, but that fine goes to the federal treasury and would not benefit the non-covered employees. Small employers with annual payroll up to \$500,000 will be exempt from the requirement and the fines would phase in for employers with payrolls between \$500,000 and \$750,000.

The creation of a new national purchasing pool-based exchange where people can purchase private coverage and the public option. The exchange starts by allowing small employers and individuals without employer-sponsored coverage to purchase in the pool, but eventually any size employer may be allowed to buy coverage through the exchange, meaning that the bill does not adhere to the promise that the public plan is limited to a small population.

The inclusion of a very rich essential benefit package with 70% the minimum actuarial value allowed for purchase.

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An individual mandate enforced solely through an income tax penalty of the lesser of 2.5% of income or an average premium in the exchange. Individuals with incomes below the tax filing standard are exempt and may also apply for hardship waivers.

Sliding-scale subsidies available in the exchange for people with family incomes of up to 400% of the Federal Poverty Level (over \$80K annually for a family of four) and very limited business tax credits for the smallest of companies with low-income wage earners.

A dramatic expansion of Medicaid to all legal residents with incomes up to 150% FPL. CHIP beneficiaries will either be folded into Medicaid or be eligible for subsidized coverage through the exchange based on family income.

Pay-fors that include a 5.4% income tax surcharge on Americans with adjusted gross incomes in excess of \$500,000, a limitation that over-the-counter prescription drugs may not be reimbursed through FSAs, an increase on the tax on distributions from a Health Savings Account that are not used for qualified medical expenses to 20% (from 10%), the elimination of the deduction for employer-sponsored retiree prescription drug plans, a tax on medical devices and significant cuts to the Medicare Advantage program.

Other interesting provisions include grants for the creation of cooperatives (co-ops), a temporary national high-risk pool and interstate compacts to sell coverage across state lines. Relative to medical malpractice, there is language that provides for early offers and certificate of merit demonstration projects and language to clarify that practice guidelines are not considered to be evidence of the standard of care owed by a health care provider. NAHU is still in the process of conducting a detailed analysis, and will release more information about the measure over the next week.

It is expected that the vote on this measure on the House floor will come extremely quickly, as soon as next Thursday or Friday. The release on October 29 gives the Democratic leadership three days to post the legislation online and another three days to post a final manager's amendment by the Democratic leadership on the Rules Committee's website. That amendment is expected to address concerns about the bill that arise as members wade through it over the weekend. Majority Leader Steny Hoyer has stated that the manager's amendment could be made publicly available as soon as Monday.

#### **Reid Will Attempt to Start Senate Bill off with a Public Option**

Senate Majority Leader Harry Reid (D-NV) announced his intention earlier this week to include a limited government-run public plan option with the opportunity for states to opt out in the health reform legislation he hopes to bring to the Senate floor. Reid has been negotiating the details of the plan with Senate Finance Chairman Max Baucus (D-MT),

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former Acting HELP Committee Chairman Chris Dodd (D-CT) and administration officials over the past two weeks in order to combine the two committee-passed comprehensive health reform bills into one piece of legislation for Senate floor consideration.

While Reid made a splash with his public statement, the details of how his plan will work have yet to materialize publicly and have only been seen by a few key senators and staff. The efforts to merge the Finance and HELP bills are reportedly being drafted into legislative language and are being reviewed by the Congressional Budget Office to determine the plan's overall cost to the federal government. It is widely expected that Reid will not release a bill until he has one with a CBO score of under \$900 billion, which could take well into next week, or even into the following one.

Several factors may hinder Reid and his efforts to bring the bill as it currently stands to the floor, namely that it is being widely reported that he doesn't yet have the critical 60 votes he needs. The first step in the process is getting 60 votes for a motion to simply bring his measure to the floor to open debate. While it is expected that Reid will eventually be able to get the votes he needs for this procedural measure to kick off discussion, key Senate moderates have been making it very clear that there are no guarantees.

The lone GOP supporter in the Finance Committee, Olympia Snowe (R-ME), is likely a lost cause to the Democrats now that Reid has decided to start off with a public plan rather than her preferred trigger mechanism. Asked Tuesday what Reid would have to change in his bill to get her vote, Snowe replied, "The whole thing." Senators Ben Nelson (D-NE) and Blanche Lincoln (D-AR) have both stated that they won't commit their votes until they have seen actual cost data and legislative language. Senator Kent Conrad (D-ND) made sure that the public option would pay more than Medicare rates and nonprofit insurance cooperatives would also be offered before committing to vote for the motion to proceed. Senator Evan Bayh (D-IN) opposed the tax on medical device manufacturers, who employ 20,000 Indiana residents, and got Reid to strike the tax.

Once debate is opened, it is expected to last anywhere from three to eight weeks and include a lengthy floor amendment process. Following that, Reid will need another key 60 votes to end debate, prevent a GOP filibuster and force a vote on final passage, which is where things are expected to get very hairy. Independent Senator Joseph Lieberman (CT) has agreed to vote with the GOP to keep debate alive if the final bill includes a public plan option. Other Democrats with serious concerns about the inclusion of a public plan include not only Nelson and Lincoln, but also Mary Landrieu (D-LA), Mark Pryor (D-AR) and Evan Bayh. There are also a number of centrists seeking modifications to the proposal like Conrad, Tom Carper (D-DE), Mark Begich (D-AK) and others. To address their concerns, it is entirely possible that Reid will abandon or substantially modify the public option provisions on the floor if the votes aren't there.