President to Democrats: Time to Proceed on Comprehensive Health Care Reform
March 5, 2010

“Everything there is to say about health care has been said, and just about everyone has said it. So now is the time to make a decision about how to finally reform health care....” With those words, President Obama called upon Congress on March 3 to move forward on comprehensive health care reform legislation. His words were primarily a signal to the majority Democrats in the House and the Senate that it’s time for each of them to take a stand on health care reform. Their answer over the coming days will determine whether they push forward with a dramatic make-or-break legislative effort to enact a comprehensive health reform law. The speech also capped a two-week period during which the President released a new proposal and conducted an impressive bipartisan summit on health care reform.

Passing comprehensive health care reform at this juncture will be difficult; however, employers need to remain vigilant during this final push. In their efforts to secure passage, the President and Democratic leaders continue to modify important details of the legislation and to add completely new provisions, with varying impacts on employers and employees. Some employers may wish to model the terms of the evolving reform plan to estimate the impact on their own circumstances.

The President's latest proposal. On February 22, President Obama released a summary of his new reform proposal. The proposal generally would modify the Senate-passed bill (H.R. 3590) to incorporate some House-approved provisions, Republican proposals and provisions already negotiated among Democrats. House and Senate leaders are not obliged to accept all of the President's proposals, but it may be hard to retreat from them now that the President has put them on the table. Some of the President's key modifications for employers include:

- **Employer “Pay or Play” Responsibility** — Under the President’s proposal, employers with more than 50 employees that do not offer coverage would pay $2,000 for each full-time employee (up from $750 per full-time employee in the Senate bill) if at least one full-time employee obtains subsidized coverage in an Exchange. Employers with 50 or more employees could subtract the first 30 workers from the payment calculation. Thus, an employer with 51 full-time employees would pay an amount equal to 51 minus 30, or 21 times the applicable per-employee payment amount. It appears that employers with more than 50 full-time employees that offer coverage but have at least one full-time employee receiving subsidized coverage in an
Exchange would pay the lesser of (i) $3,000 for each full-time employee receiving subsidized coverage in an Exchange or (ii) $750 for each full-time employee. As under the Senate bill, this requirement would take effect in 2014.

• **An Excise Tax on High-Cost (Cadillac) Health Plans** — The President’s proposal would defer the effective date of the excise tax to 2018 for all plans, while raising the threshold values of health coverage that would trigger the tax to $10,200 for single coverage and $27,500 for family coverage (no longer counting dental and vision coverage), and indexed at the CPI plus 1% beginning in 2019. Higher thresholds would also apply for employers whose health care costs are higher due to the age or gender of their workers, as well as for certain high-risk occupations and early retirees.

• **A Delay in the Change in Employer Tax Treatment of the Part D RDS Subsidy** — The President’s proposal would delay until 2012 the elimination of the employer tax deduction for expenses allocable to the Medicare Part D retiree drug subsidy. A delayed effective date, however, is unlikely to affect the important accounting issues raised by this provision.

• **Closing the Medicare Prescription Drug “Donut Hole”** — Unlike the Senate bill, the President’s proposal would fill in the Medicare Part D donut hole entirely. The President’s proposal would replace the Senate’s $500 increase in the initial coverage limit with a $250 rebate to Medicare beneficiaries who hit the donut hole in 2010. The proposal would close the donut hole completely by phasing down the coinsurance so that it reaches the standard 25% by 2020 throughout the coverage gap.

• **Medicare Advantage Payments** — The President’s proposal would borrow elements from both the House and Senate approaches to reduce the amount paid to Medicare Advantage plans over time. The proposal would set benchmark payment amounts at different percentages of the current Medicare average fee-for-service costs in an area. These benchmarks would be phased in based on the relative payments for fee-for-service costs in an area and would include bonuses for quality and enrollee satisfaction. A plan’s retention of any savings between the benchmark payment and actual plan bid would depend on a plan’s quality rating, with those receiving lower ratings retaining less of any savings they generate.

• **Broadening the Medicare Hospital Insurance (HI) Tax Base for High-Income Taxpayers** — The President’s proposal would include the Senate provision increasing the Medicare hospital insurance (HI) tax for high-income households by 0.9% to a rate of 2.35% on the portion of wages above $200,000 for individuals and $250,000 for married couples filing jointly. In addition, it would impose a new 2.9% tax on passive income from interest, dividends, annuities, royalties and rents (other than such income that is derived in the ordinary course of a trade or business) on taxpayers with income above $200,000 for singles and $250,000 for married couples filing jointly. Neither change would increase the portion of the Medicare payroll tax paid by employers.

• **Other Tax Changes** — The President’s plan would impose an additional 10% penalty on non-health withdrawals from HSAs, limit health flexible spending accounts under cafeteria plans to $2,500, raise the floor on the itemized deduction for medical expenses to 10% of AGI for the
non-elderly and non-disabled, and limit excessive compensation paid by certain health insurance companies.

- **An Increase in the Tax on Manufacturers of Brand-Name Pharmaceuticals** — The President’s proposal would increase the Senate bill’s assessment on pharmaceutical manufacturers from $23 billion over 10 years to $33 billion over 10 years, but would delay the onset of the tax by one year, until 2011.

- **A Delay in the Tax on Health Insurers and Device Manufacturers** — The President’s plan retains the Senate’s $67 billion tax on health insurers to be collected over 10 years; however, the President would delay the onset of this tax until 2014. The President also proposes to exempt from the tax certain health insurers, such as nonprofits that receive more than 80% of their income from government programs that target low-income or elderly populations, or those with disabilities, and VEBAs that are not established by employers. The President would retain the assessment on medical device manufacturers, collecting $20 billion over 10 years, starting in 2013, but would convert it from a fee to an excise tax to facilitate administration by the IRS.

- **Individual Responsibility** — The President’s proposal generally follows the Senate’s approach to imposing and enforcing an “individual mandate” to purchase health insurance by imposing a penalty based on the greater of a flat dollar amount or a percentage of income on individuals that do not become insured. However, the President’s proposal would lower the flat dollar assessment and raise the percent of income assessment. The flat dollar amount would be $325 in 2015 and $695 in 2016, with subsequent years indexed from $695. The percent of income amount would be 1.0% in 2014, 2.0% in 2015, and 2.5% for 2016 and subsequent years. Under the President’s proposal, individuals with income below the tax filing threshold would not pay the assessment, e.g., a married couple with income below $18,700.

- **Uniform Expansion of National Medicaid Eligibility** — The President’s proposal would follow the Senate bill in creating a nationwide Medicaid eligibility floor at 133% of the federal poverty level, e.g., $29,000 for a family of four, based on 2009 poverty levels. Unlike the Senate bill, the President’s proposal calls for uniform 100% federal support for all states for newly eligible individuals from 2014 through 2017, then 95% federal support for 2018 and 2019, and then 90% federal support for 2020 and subsequent years.

- **An Increase in Tax Credits for Health Insurance Premiums and Cost-Sharing Assistance** — Compared to the Senate bill, the President’s proposal would increase the federal premium subsidies for certain families to purchase health insurance through an Exchange. It would also increase cost-sharing assistance for certain individuals and families.

- **Consumer Protections Against Health Insurer Practices** — The President’s proposal would modify provisions in the Senate bill that would exempt so-called “grandfathered” plans from certain requirements. Within several months after enactment, the proposal would require plans to cover adult dependents up to age 26, prohibit rescissions, mandate that plans have a stronger appeals process and require state insurance authorities to conduct annual rate reviews. When the health insurance Exchanges begin operation in 2014, the President’s proposal would prohibit
all annual and lifetime limits, ban preexisting condition exclusions and prohibit discrimination in favor of highly compensated individuals. Beginning in 2018, grandfathered plans would have to cover proven preventive services with no cost sharing. It remains unclear precisely how these grandfathering provisions would be applied to employer group health plans in existence at the time that a health care reform law is enacted.

- **Federal Oversight of Insurance Premium Increases** — An aspect of the President's proposal not found in the bills passed by the Senate or House would create a new Health Insurance Rate Authority to provide oversight at the federal level, help states determine how rate review will be enforced and monitor insurance market behavior. If an insurer’s rate increase is determined to be unreasonable and unjustified, health insurers would be required to lower premiums, provide rebates or take other actions to make premiums affordable.

**What's next?** Democratic leaders in the House and Senate will be counting votes to determine whether they should risk moving forward on a dramatic “two bill” effort to enact health reform.

Under that two-bill approach, the House would vote to approve the Senate bill (H.R. 3590). A simple majority of House members voting would be necessary to pass the Senate bill.

In addition, a second, new bill would amend the Senate bill. It would contain changes (perhaps including a number of modifications suggested by the President) that must be agreed to by Democrats in the House and Senate. This second bill is expected to move under a procedure known as budget reconciliation. Budget reconciliation bills require only a simple majority to pass, rather than the 60-vote supermajority necessary to overcome a possible filibuster by those opposed to the legislation. In theory, the President could sign the Senate bill into law and then sign the budget reconciliation bill into law, immediately modifying the Senate bill.

If the Democrats go ahead, they will embark on a process fraught with challenges that make this an uncertain, but not impossible, approach to enacting a comprehensive health reform law.

House and Senate leaders are reportedly targeting Congress’s next recess — scheduled to begin March 26 — as the deadline for moving health care reform, but such deadlines often slip, and Democrats could, in fact, give themselves more time if it appears they will move forward.

The President has asked his party to move ahead with health care reform despite the attendant political risks. But he said in his March 3 speech that he would “do everything in his power to make the case for reform.” Employers again face a crucial — though uncertain — juncture in the health care reform debate. Thus, some key points to bear in mind over the next several weeks include:

- President Obama and Congressional Democrats continue to pursue comprehensive health care reform even though the issue now competes for attention with the economy, employment and other issues.

- Given the changed circumstances in Congress following election of Senator Scott Brown (R-MA), enacting comprehensive reform legislation is now far more difficult than it might have been in 2009. The upcoming elections add to the political difficulties.
• Look for Democratic leaders in Congress to signal whether they will pursue this two-bill strategy — and to float different compromises to see if they can attain the necessary votes.

• Employers should pay close attention to how the reform package may be modified in the course of this effort in order to attract sufficient support to pass a reconciliation bill in the House and the Senate.

This effort may or may not lead to passage of a comprehensive health care reform law. For now, however, the President has told the Democratic leadership that it’s time to try, and we all await their answer. Towers Watson continues to closely follow these developments, even as the outlook for passage of health care reform legislation grows more uncertain.

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