

HEALTH LAW UPDATE

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OUTLOOK ON HEALTH REFORM: THE CLOCK IS TICKING

As Democratic leaders continue to negotiate and reconcile the remaining pieces of a compromise healthcare reform bill, the January 19 election of Republican Scott Brown for the Senate seat held by the late Sen. Ted Kennedy (D-Mass.) has thrown the Democrat's strategy for passing healthcare reform into disarray.

Reform deliberations dominated the Senate during the month of December culminating with the passage of the Patient Protection and Affordable Care Act (H.R. 3590) on a party line vote (60-39) early Christmas Eve. Since that time, Democratic leaders in both chambers have worked with the administration to reconcile key differences between the House and Senate bills. Chief among those requiring resolution and agreement before a compromise measure can be achieved are:

- Federal or state administered exchanges, with or without a public option
- Tax credits and subsidies for the purchase of health insurance
- Penalties and exemptions for the uninsured
- Taxes on expensive "Cadillac" insurance plans
- Repeal of the insurance industry's antitrust exemption
- Abortion coverage
- An independent payment board to reduce Medicare spending
- Closing the Medicare prescription drug "donut hole" gap
- Reductions in Medicare and Medicaid disproportionate share payments
- Expanded eligibility for Medicaid
- The survival of the Children's Health Insurance Program

So what are the possible scenarios for passage? The House could pass the Senate bill without any changes and send it directly to the President for his signature, with or without a "cleanup" bill to follow later; the House and Senate could finish negotiating a reconciled bill and pass it before the Commonwealth of Massachusetts certifies the Brown election and he is seated in the Senate (approximately 10-12 days post-election); lawmakers could resort to a number of "parliamentary gymnastics," including a procedural option known as reconciliation to push through a negotiated bill or a follow-on "cleanup" bill; Democrats could try to secure a Republican vote (i.e., Olympia Snowe (R-Maine)) in the Senate or pass a scaled-back bipartisan bill or begin the process anew.

Greater clarity regarding which track healthcare reform likely will take should emerge in the coming days and certainly by the time President Obama delivers his State of the Union address on January 27, 2010. In the meantime, providers should continue to factor the myriad of proposed business, coverage and delivery system reforms present in both the Senate and House bills in their strategic planning.

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