Major Health Care Legislation in Congress

Information courtesy of the National Association of Insurance Commissioners

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House Tri-Committee Bill

The three committees of jurisdiction in the House of Representatives have reported versions of the H.R. 3200, the America's Affordable Health Choices Act to the full House. The legislation would create a new independent federal agency, the Health Choices Administration, led by a Health Choices Commissioner who would be responsible for operating a national Health Insurance Exchange.

Individuals could purchase nongroup coverage through the exchange and employers could allow employees to enroll in coverage through the exchange while providing a contribution toward the cost of coverage.

Plans would be sold at four different benefit levels. States could apply to operate the exchange themselves. Within this exchange would be a public plan option competing against private insurers. This plan would pay Medicare reimbursement rates to providers. Subsidies would be available on a sliding scale for all individuals between 133% and 400% of the federal poverty level (FPL). All individuals up to 133% FPL would be eligible for Medicaid, with the federal government assuming the additional cost.

The Health Choices Commissioner would also be responsible for implementing a number of insurance market reforms, including guaranteed issue, elimination of preexisting condition exclusions and adjusted community rating. Premiums could vary only by age (2:1 max) and geography. The Commissioner would also be tasked with developing new federal standards for essential benefits, marketing, network adequacy, grievances and appeals, and coordination of benefits. These federal standards would be floors, not ceilings, and states that wished to could go beyond them.

In addition, all individuals would be required to obtain health insurance coverage of one form or another. This requirement would be enforced with a tax penalty of 2.5% of modified adjusted gross income. This penalty would amount to approximately $875 per year for someone earning $45,000. Employers would also be required to provide qualifying coverage to employees. This would be enforced through an 8% payroll tax for the largest businesses.

Prior to adoption in the Energy and Commerce Committee, a number of important amendments were adopted to gain the support of conservative Democrats who objected to aspects of the bill and to ensure the support of liberal Democrats who objected to the concessions made to the conservatives. The first set of amendments:

- Reduced the subsidies under the bill by $100 billion
- Required that the public plan negotiate provider reimbursement levels
- Provided funds to create cooperative insurance plans to be sold within the exchange alongside the public and private plans

The second set of amendments instituted a series of measures to save money by requiring the Secretary of HHS to negotiate prescription drug prices under the Medicare Part D program and to require insurers selling coverage in the exchange to get approval from the Commissioner before increasing premiums by more than 150% of the medical inflation rate. It is unclear whether these amendments will be contained in the legislation that ultimately is considered on the House floor.

House Tri-Committee Bill

- ☐ State run
- ☒ Low- to medium-income subsidies
- ☒ Public plan option
- ☒ Individual tax penalty
- ☒ Employer tax penalty

Senate HELP Committee Bill

The Senate Committee on Health Education Labor and Pensions (HELP) reported health reform legislation to the full Senate on July 17. This bill would give states the opportunity to create health insurance exchanges through which individuals and small groups may purchase coverage. If a state fails or declines to create an exchange, the federal government would operate a national exchange in the states.

In addition to private health insurance plans, a public plan would also operate in the exchange. It would negotiate payment rates with health care providers. Sliding scale subsidies would be available for all individuals between 150% and 400% FPL. All individuals below 150% FPL would be eligible for Medicaid, with the federal government paying the entire cost for the first several years. Over time, the additional federal assistance would be phased out.

The legislation would also make a number of health insurance market reforms, including guaranteed issue, adjusted community rating allowing variation for age (2:1 max) and geography, elimination of preexisting condition exclusions and annual and lifetime limits. These federal standards would be floors, not ceilings, allowing states to go beyond if they choose to do so.

The bill would also require all individuals to obtain coverage, with a tax penalty of up to $750 being imposed for those who fail to do so. Employers must provide qualifying coverage to all employees and pay at least 60% of the premium or pay a penalty of $750 per employee.

Senate HELP Committee Bill

- ☒ State run
- ☒ Low- to medium-income subsidies
- ☒ Public plan option
- ☒ Individual tax penalty
- ☒ Employer tax penalty

Senate Finance Proposal

The Senate Finance Committee continues to work on reaching a bipartisan agreement on health reform legislation. The outlines of the Finance proposal are similar to what is contained in the House and Senate HELP bills.

Most likely, states will be given the opportunity to develop and create health insurance exchanges within broad parameters set by the legislation. The most recent reports from the negotiations indicate that a public plan will not be included in the bill. Funds may be provided to encourage the development of cooperative health insurance plans. Subsidies would be provided to help low-income individuals purchase coverage and Medicaid eligibility would be expanded.

Insurance market reforms would include an individual mandate paired with guaranteed issue, adjusted community rating and elimination of preexisting condition exclusions and annual and lifetime limits. It currently appears that an employer mandate will not be included in the bill.

Senate Finance Proposal

- ☒ State run
- ☒ Low- to medium-income subsidies
- ☐ Public plan option
- ☒ Individual tax penalty
- ☐ Employer tax penalty

Durbin-Lincoln SHOP Act

First introduced last year, the Small Business Health Options Program (SHOP) Act would create a nationwide exchange for businesses with up to 100 employees and the self employed through which to purchase coverage. Plans would be sold on a statewide and nationwide basis.

For statewide plans, all state benefit mandates would be maintained. For national plans, a minimum benefit package would be created by the Institute of Medicine. Rating rules inside and outside the exchange would be developed by the NAIC and submitted to Congress for adoption in the fourth year of the program.

Current state rating rules would apply until the fifth year after enactment. Tax credits would be provided to small businesses to assist them in providing coverage to employees. States that had enacted minimum small group rating rules, included groups of one in their small group markets and had created their own exchanges would be allowed to opt out of the nationwide exchange.

Durbin-Lincoln SHOP Act

- ☐ State run
- ☐ Low- to medium-income subsidies
- ☐ Public plan option
- ☐ Individual tax penalty
- ☐ Employer tax penalty

Wyden-Bennett Healthy Americans Act

Initially introduced last year, the Healthy Americans Act originally would have phased out all employer-sponsored coverage in favor of individual policies purchased through state-run health insurance exchanges. The legislation was modified before introduction this year to preserve employer sponsored coverage alongside the health insurance exchanges.

Under the bill, all coverage would be guaranteed issue and community rated with variation allowed for geography and smoking status. An individual mandate would be created with tax penalties of 115% of the average premium. Employers would be required to make payments equal to a percentage of the average cost of a plan. This percentage would vary between 2% and 25% depending on the size and earnings of the employer. Premium subsidies would be available for individuals up to 400% FPL.

Wyden-Bennett Healthy Americans Act

- ☐ State run
- ☒ Low- to medium-income subsidies
- ☐ Public plan option
- ☒ Individual tax penalty
- ☐ Employer tax penalty

Coburn-Burr Patient's Choice Act

Senators Tom Coburn (R-OK) and Richard Burr (R-NC) introduced a Republican alternative earlier this year. The legislation would create state-based health insurance exchanges.

Plans sold through the exchanges would be guaranteed issue and would offer benefits equivalent to those in the Federal Employees' Health Benefit Program. State mandated benefit laws that conflict with these benefits would be preempted in the exchange. In lieu of an individual mandate, states would be allowed to auto-enroll individuals into high-deductible plans through the exchange. The tax exclusion of employer-sponsored coverage would also be replaced with a tax credit. Individuals below 200% FPL would receive additional subsidies to help purchase coverage.

Coburn-Burr Patient's Choice Act

- ☒ State run
- ☒ Low- to medium-income subsidies
- ☐ Public plan option
- ☐ Individual tax penalty
- ☐ Employer tax penalty

Definitions

Adjusted community rating, allowing variation for age (2:1 max)—Adjusted community rating is the same as modified community rating. Adjusted community rating is between individual age rating (under which each person has their own premium), and pure community rating (under which there is only one premium applicable to all). "Adjusted community rating, allowing variation for age" permits rates that vary by age, but the highest premium cannot be more than double the lowest premium (2:1 max).

Guaranteed issue—Guaranteed issue is the right to purchase insurance without a physical examination; the present and past physical condition of the applicant are not considered.

Health insurance exchange—Health insurance exchanges are entities that organize the market for health insurance by assembling individuals and small businesses into larger pools that spread the risk for insurance companies, while facilitating the availability, choice and purchase of health insurance.

Preexisting condition exclusion—A preexisting condition is an illness or disability for which the insured was treated or advised within a stipulated period of time before making application for a life or health insurance policy. A preexisting condition can result in the cancellation of the policy.