

Status of Legislation

January 27

Summary and Overall timing

Health promotion provisions remain in the health care reform bills passed by the Senate on December 24, 2009 and the House on November 7, 2009. Efforts are ongoing to resolve differences in the health promotion provisions and the many other provisions in these bills. The Senate and House must vote on and pass the exact same bill before President Obama can sign it into law.

The January 19 election of Republican Scott Brown to the Massachusetts's Senate Seat previously held by deceased Senator Edward Kennedy will eliminate the Democrat's 60 seat majority in the Senate as soon as Scott Brown is seated; he is expected to be seated February 11. This eliminates the Democrat's ability to overcome a Republican filibuster in the Senate to block debate and a vote on a revised health care reform bill; 60 Democrat votes are required because the all Senate Republicans have voted against the health care reform bills to this point.

The bottom line is that passing a health care reform bill in the next few months is much more difficult without a 60 vote Democrat majority in the Senate. If a health care reform bill does NOT pass in the next few months, Health Promotion Advocates may shift our focus to advocating for passage of a free standing health promotion bill.

Options for passing a health care reform bill are listed below in order of likelihood of occurring.

1. The existing Senate bill is passed in the House in conjunction with a reconciliation bill passed in the Senate and House that eliminates objectionable provisions in the Senate bill (such as special payments to cover Medicaid costs in the state of Nebraska). A reconciliation vote requires only 50 votes (plus the Vice President's tie breaking vote). House speaker Pelosi has stated that there are sufficient votes in the House to pass the Senate bill in this fashion.
2. A striped down version of the bill is passed in the House and through a reconciliation vote in the Senate. Bills passed through reconciliation must be limited to issues related to balancing the budget. A bill passed through reconciliation would not include health promotion provisions. Health promotion provisions would need to be passed through subsequent amendments to that bill and would be considered later in 2010, 2011 or even later.
3. The House passes the existing Senate bill as is. House speaker Pelosi has stated that there are NOT sufficient votes in the House to pass the Senate bill in this fashion.
4. Differences between the Senate and House bills are resolved quickly and voted upon before Senator Scott Brown is seated on February 11. President Obama has stated his opposition to this option.
5. The Senate rule allowing filibuster to block debates on an issue and vote on a bill is eliminated, or the number of votes required to stop a filibuster is reduced below

60. This would allow passage of a Senate bill with 50 votes (plus the Vice President's tie breaking vote). Who are we kidding!
6. One or more Republicans agree to support a compromise bill in the Senate.
7. The Republicans and Democrats work together to craft and pass a bill they can both support.

It is very difficult to predict timing on this issue, however, given all the time and political capital expended by the Democrats on health care reform, passionate support on this issue by Progressive Democrats, and the negative impact of failing on the Democratic Senators and Representative in the November 2010 elections, we expect considerable additional effort to be invested in this issue in the next few months. That said, President Obama is expected to shift his focus to creating and passing a "Jobs bill."

December 28, 2009

Senate

The Senate passed the "Patient Protection and Affordable Care Act" on Thursday, December 24, 2009. A manager's amendment restored a grant program comprehensive workplace wellness programs for small business.

House of Representatives

The House of Representatives passed the Affordable Health Care for America Act on November 7

Summary and Overall timing

Efforts to resolve differences between Senate and House bills have begun. Votes on combined bills are expected in the Senate and House in late January to early February and a signature by President Obama in February.

The provisions below are in Senate and/or House bills.

Senate and House

1. Development of a national health promotion plan.
2. Enhanced health promotion research.
3. Research on best practices in workplace health promotion programs.
4. Grants or tax credits to pay a portion of the cost of comprehensive workplace health promotion programs.

Senate

5. Technical assistance to enhance evaluation of workplace health promotion programs.
6. Regular periodic surveys on workplace health program prevalence and components.
7. Allow employers to offer employees a premium discount of up to 30% (instead of the current 20%), for positive lifestyle practices or participation in health promotion programs, include safeguards, and refer to Health and Human Services to study benefits of increasing the portion to 50%.

House

8. A national campaign to employers on the benefits of workplace health promotion programs.

November 23, 2009

Summary and overall timing

The Senate is expected to begin discussion on its "Patient Protection and Affordable Care Act" when it returns from recess on December 1. Efforts to resolve differences between the Senate and House of Representatives bills in Conference Committee will begin as soon as the Senate passes its bill. The Democrats hope to complete those Conference Committee discussions by mid January, and send a final bill to the president for signature before his State of the Union Address in January.

Senate

The Senate introduced the "Patient Protection and Affordable Care Act" on November 21. This bill combined the Senate HELP Committee and Finance Committee bills passed in July and October. Debate is expected to begin when the Senate returns from recess on December 1. Democrats hope to pass the Act before they leave for recess on December 24. The Act includes provisions for the following: 1) a national health promotion plan, 2) enhanced health promotion research, 3) technical assistance to enhance evaluation of workplace health promotion programs, 4) regular periodic surveys on workplace health program prevalence and 5) provisions to allow employers to offer employees a premium discount of up to 30% for positive lifestyle practices or participation in health promotion programs.

Several provisions that had been in the Senate HELP Committee and Finance Committee were not included in the combined bill. These include 1) a national campaign to employers on the benefits of workplace health promotion programs, 2) research on best practices in workplace health promotion programs and components, and 3) grants to pay a portion of the cost of comprehensive workplace health promotion programs for small businesses.

House of Representatives

The House of Representatives passed its bill on November 7.

November 9, 2009

Summary and overall timing

Despite the House of Representatives passing its health care reform bill, it is difficult to predict the timing going forward. The Senate may vote on its version in November, but also may delay a vote until January or February of 2010. Some people feel momentum will be lost and no legislation will not pass if a vote is delayed until 2010. Conference Committee discussions to resolve differences between the House and Senate bills are expected to take at least a month after the Senate bill passes. A final bill could be signed by the President as early as December 24, 2009 and as late as March, 2010.

House of Representatives

The House of Representatives unveiled HR 3962, the Affordable Health Care for America Act on October 30 and passed it by a 220-215 vote on November 7. This bill represents the combined health care reform bill from the three House committees involved in these discussions. The Act includes provisions for a national health promotion plan, enhanced health promotion research and employer grants for comprehensive health promotion programs for small businesses. It does not include provisions that allow employers to provide a health plan premium discount of up to 30% for employees who meet health standards, participate in health promotion programs, or have medical condition that prevents them from participating (HR 3688 by Representatives Arcuri and Buyer).

Senate

The Senate has delayed introduction of its combined health care reform bill until the Congressional Budget Office completes scoring of various health insurance coverage options and financing models and the Senate leadership feels it has enough votes to prevent a filibuster. The Senate may or may not unveil its plan and call for a full Senate vote before the end of November.

October 14, 2009

Summary and overall timing.

The Senate Finance Committee passed America's Healthy Future Act on October 13, 2009. All five of the Senate and House committee have now passed health care reform legislation at the committee level. A Senate bill combining the Finance and HELP bills is now being prepared and is expected to be completed by the week of October 26. Discussion on the Senate floor is expected to start the week of the 26th and a vote taken by the week of November 9nd. The House of Representatives is expected to vote about the same time, but possibly a few days later. The Conference Committee is expected to complete combination of the Senate and House bills by the middle of December so final votes can be taken in the Senate and House and the bill sent to the President for signature before the end December.

Finance Committee Health Promotion Provisions.

Senators Carper's amendment was approved in the Chairman's Mark of the Senate Finance Committee to provide \$200 million over a period of five years to support grants for wellness programs for employers with 100 or less employees.

Senator Ensign & Carper's amendment was approved to allow employers to provide a health plan premium discount of up to 30% for employees who meet health standards (like not smoking, having recommended BMI, normal blood pressure and cholesterol), or who agree to participate in health promotion programs to improve those values, or who have medical condition that prevents participating in those programs. It also allows Health and Human Services to increase the amount to 50% if research evidence

demonstrates that such an increase would improve health. This is very similar to the language passed in the HELP bill.

Provisions to enhance Medicare and Medicaid coverage of wellness services remained in the final bill (See September 14 update below).

House of Representatives.

Representatives Michael Arcuri and Steve Buyer introduced HR 3688 on October 1, 2009, with language very similar to the Ensign/Carper amendment that passed in the Senate Finance Committee (see above) to allow employers to provide a health plan premium discount of up to 30% for employees who meet health standards, participate in health promotion programs, or have medical condition that prevents participating. It also allows Health and Human Services to increase the amount to 50% after study. They hope to build support for the bill and have the concept included to the health care reform bill that emerges from the Conference Committee.

September 14, 2009 Update

Summary and overall timing

The Senate and House of Representatives returned from Summer Recess on September 8, 2009. The Senate Finance Committee released a summary of its health care reform plan on September 7, is expected to release a Chairman's Mark on September 15, and begin voting on September 22. A vote on health care reform by the full Senate is expected to begin as early as September 28. A vote by the full House is expected shortly after the full Senate vote. Work by the Conference Committee to resolve differences between the Senate and House is expected to occur in October and November, with hopes of sending a bill to the President for signature by Thanksgiving.

Finance Committee Health Promotion Provisions

Tax credits for comprehensive workplace health promotion programs were not included in the summary document released by the Senate Finance Committee.

Medicare Wellness provisions include coverage of a personalized prevention and wellness plan, coverage for preventive services recommended by the U.S. Preventive Services Task Force (USPSTF), and a five year initiative to explore providing incentives for people who achieve healthy lifestyles.

Medicaid Wellness provisions include financial incentives to states that provide coverage and remove cost-sharing for all recommended preventive services, requiring states to provide coverage and remove cost-sharing for tobacco cessation services for pregnant women, \$100 million in grants to states to develop incentives to Medicaid enrollees to participate in programs to improve high blood pressure and high cholesterol, quit tobacco use, lose weight, reverse diabetes, and treat other conditions like depression.

Senator Harkin appointed Chairman of HELP Committee

Senator Harkin, D-Iowa, was appointed chairman of the Health Education Labor and Pensions Committee, to replace Senator Kennedy, who passed away August 26, 2009. Senator Harkin is a long time champion of health promotion and was the author of the health promotion provisions in the HELP Affordable Health Choices Act.

August 10, 2009 Update

Summary and overall timing

Very little has happened in the Senate or the House of Representatives related to health promotion in health care reform legislation since our July 21 update. Members of the Senate and House are now on Summer Recess and will return September 8. Completion of the health care reform legislation before the end of 2009 is still likely, but timing on committee level work is difficult to predict.

House of Representatives

Three committees in the House of Representatives (Energy and Commerce, Ways and Means, and Education and Labor) voted to pass different versions of comprehensive health care reform legislation called America's Affordable Health Choices Act, H.R. 3200 before they left for recess on July 31, 2009. However, there are approximately 50 amendments pending that will be considered when House returns from recess on September 8. Committee member will combine the three bills into one bill to sent to the full House for a vote.

Senate

The Finance Committee has set a new deadline of September 15 to release the Chairman's Mark of its version of the Affordable Health Choices Act. The Senate HELP Committee passed its version on July 15, 2009, which the health promotion provisions intact.

July 21, 2009 Update

Overall Timing

President Obama has been pushing Congress to complete committee level work on health reform legislation. His goal is for floor level votes to be taken in the Senate and House of Representatives before the August 8 recess, differences between the House and Senate to be resolved after the recess, and a bill delivered to his desk for signature by October 15. However, the Finance Committee has not even released its Chairman's mark to be reviewed at the Committee level, so this timetable is not likely to occur. Completion of the bill before the end of 2009 is still likely.

Senate HELP Committee

The Senate HELP Committee passed its Affordable Health Choices Act on July 15, 2009. The provisions in Title III: Improving the Health of the American People remained intact. However, there was a major revision to the portion of the health plan premiums

charged to employees that can be tied to lifestyle factors. The portion increased from 20% to 30% and the Department of Health and Human Services was given authority to increase this amount to 50% if research evidence demonstrates that such an increase would improve health.

Senate Finance Committee

The Senate Finance Committee had not released its Chairman's mark as of July 21, 2009.

House of Representatives Tri-Committee Health Care Reform Legislation.

The three committees (Energy and Commerce, Ways and Means, Education and Labor) working together in the House of Representatives to develop health care reform legislation released their final draft on July 14. There were no substantial changes to the Title III: Prevention and Wellness from the version released earlier. The House is expected to vote before the August 8 recess.

Workplace Wellness Program Grants, Sec 2552. An amendment was drafted by George Miller, Chairman of the Education and Labor Committee on July 16 that would provide grants of up to \$50,000 to pay for half the cost of comprehensive workplace health promotion programs. This amendment has not been voted upon.

June 30, 2009 Update

For the past few years, we have been focusing on building support for two health promotion bills, Health Promotion FIRST (S1001 and HR2354) and Healthy Workforce Act (S803 and HR 1897). The great news is that Congress has included many of the provisions of these bills in larger health care reform legislation. The Senate HELP Committee voted on their bill the last week of June. The Senate Finance Committee was scheduled to vote the second week of July. The House committees are expected to vote the third week of July. We expect these bills to be voted on at the full Senate and House of Representatives level as soon as the third week of July, and as late as the middle of September. President Obama is expected to sign health care reform legislation into law in October.

Our focus now is on making sure health promotion provisions that are included in health care reform legislation remain in the final bill that passes Congress and is signed by the President. We need to reach all 535 members of the Senate and House of Representatives to let them know their constituents support these concepts. We are placing special emphasis on the provisions that came from our two original bills, but we support many of the other health promotion ideas in the bills.. Below is a brief description of health promotion concepts in the current health care reform legislation.

Senate HELP Committee

The Senate HELP Committee health care reform legislation includes three key provisions from Health Promotion Funding Integrated Research Synthesis and Training (FIRST) Act and Healthy Workforce Act. These are listed below.

1. A national health promotion plan developed by a Council comprised of the President's cabinet (Sec 301).

2. Research to improve program outcomes and disseminate findings (Sec 303 & 331).
3. Visibility, technical assistance, effectiveness research and monitoring of workplace health promotion (Sec 334).

It also includes other excellent provisions to support wellness. All the provisions are listed below.

Title III: Improving the Health of the American People

Subtitle A – Modernizing Disease Prevention of Public Health Systems

- Sec. 301. National Prevention, Health Promotion and Public Health Council
- Sec. 302. Prevention and Public Health Investment Fund
- Sec. 303. Clinical and Community Preventive Services
- Sec. 304. Education and Outreach Campaign Regarding Preventive Benefits

Subtitle B – Increasing Access to Clinical Preventive Services

- Sec. 311. Right Choices Program
- Sec. 312. School-Based Health Clinics
- Sec. 313. Oral Healthcare Prevention Activities
- Sec. 314. Oral Health Improvement

Subtitle C – Creating Healthier Communities

- Sec. 321. Community Transformation Grants
- Sec. 322. Healthy Aging, Living Well
- Sec. 323. Wellness for Individuals with Disabilities
- Sec. 324. Immunizations
- Sec. 325. Nutrition Labeling of Standard Menu Items at Chain Restaurants and of Articles of Food Sold at Vending Machines

Subtitle D - Support for Prevention and Public Health Information

- Sec. 331. Research on Optimizing the Delivery of Public Health Services
- Sec. 332. Understanding Health Disparities: Data Collection and Analysis
- Sec. 333. Health Impact Assessments
- Sec. 334. CDC and Employer-based Wellness Programs

Senate Finance Committee

The Senate Finance Committee bill includes the core provision of an employer tax credit for a comprehensive health promotion program. Most likely these provisions will provide a tax credit to small employers to cover 50% of the cost of a comprehensive health promotion program. The size of employers who qualify and the amount of the credit are still in flux, but this will probably apply to employers who are too small to be self-insured. Over time, we may be able to increase this tax credit to cover larger employers.

House of Representatives

Three committees (Energy and Commerce, Ways and Means, Education and Labor) worked together in the House of Representatives to develop health care reform legislation. The prevention components of their bills were very similar to those in the Senate. The main titles of the main sections are below. Our primary advice to the members of the House of Representatives is to enhance these provisions to reflect the more robust provisions in the Senate legislation.

Title III: Prevention and Wellness

3111 Prevention and Wellness Trust

3121 National Prevention and Wellness Strategy
3131 Task Force on Clinical Preventive Services
3132 Task Force on Community Preventive Services
3141 Prevention and Wellness Research Activities
3142 Community Based Prevention and Wellness Research Grants
3151 Community Based Prevention and Wellness Services Grants.

Increase Portion of Health Plan Premiums Tied to Health Behaviors

Competing proposals were introduced on the portion of a health plan premium that could be tied to lifestyle related factors. One proposal was to reduce the portion from the current 20% level to 0%. The other proposal was to increase the level to 50%. The Senate Finance Committee has deferred jurisdiction over this issue to the Senate HELP Committee. The Senate HELP Committee has proposed to retain the current 20% level, then refer jurisdiction over this issue to the Department Health and Human Services (HHS) to consider further increases subject to scientific evidence that demonstrates increasing that portion would enhance people's health, and to build protections to prevent discrimination against people with pre-existing medical conditions. We support retaining the current 20% level, and deferring future changes to research based decisions to HHS.
