

Reid's Health Bill Keeps Class Act, Expands Delivery Reforms, Tweaks IMAB, Leaves Out PBM Tax and SGR

Senate Majority Leader Harry Reid (D-NV) on Saturday filed cloture on a 383-page manager's amendment that removes the health reform bill's one-year "doc" fix, places more restrictions on insurers, expands several Medicare delivery system reforms, restructures the annual industry fees and further increases the Medicare payroll tax for couples earning above \$250,000. Reid's action, following a deal he struck late Friday with Sen. Ben Nelson (D-NE) on compromise abortion language and 100 percent federal coverage of Nebraska's newly eligible Medicaid recipients, positions the chamber to hit its goal of passing the legislation Christmas eve.

Despite rumors circulating among Washington lobbyists over the past few days, the manager's amendment fails to include a tax on pharmacy benefits managers and retains the controversial CLASS Act. Reid's proposal, as expected, also scraps the public insurance option and instead establishes "multi-state" plans that would be overseen by the Office of Personnel Management, the agency currently responsible for federal health benefits.

Reid's proposal also scraps the Finance Committee bill's one-year physician payment fix, but Reid indicated Saturday he will move separately to find a permanent solution to the Medicare physician payment system ([see related story](#)).

The following is a rundown of other key changes included in Reid's package:

Medical loss ratio adjusted: Sens. Jay Rockefeller (D-WV) and Al Franken (D-MN) applauded Reid for including in his manager's amendment a provision that requires health insurance companies to put 85 percent of premiums (85 percent in the large group market, 80 percent in the small and individual group markets) toward actual health services -- not administrative costs, marketing campaigns or profits. The permanent requirement is modeled on the Franken-Rockefeller Ensuring Value for Premiums Act.

Franken issued a statement noting that advocates had tried to get such profit restrictions in place in many states with limited success. He said the new medical loss ratio would "put the brakes on the skyrocketing insurance premiums."

Rockefeller, who heads the Senate Commerce Committee and has spearheaded investigations into health insurance company spending, said in a statement: "Gone are the days of health insurance companies running rampant without oversight and accountability -- now they must be accountable to consumers and spend more of their hard-earned dollars on actual health care and not on filling their coffers. Even though we were not able to secure a public option, this legislation achieves significant private health insurance industry reform."

Currently, according to a background sheet supplied by the two senators, "on average, in the small group market (businesses with fewer than 50 employees), health insurers only

spend 79 cents out of every dollar on health care. And in the individual market, it's even worse: 74 cents per dollar, so the health insurer keeps more than a quarter of every individual premium dollar for overhead and profits."

Reid's amendment sets an 85 percent standard on insurance companies nationwide, allowing only the remaining portion to be spent on administrative costs, marketing campaigns, and profits, according to the background sheet. Certain non-profit insurers maintaining an MLR above 90 percent would be exempt from the annual fee on insurers under Reid's package.

CLASS Act retained: The bill includes a measure championed by the late Sen. Edward Kennedy (D-MA) that would create a long-term insurance program for adults who become functionally disabled. There was much speculation over whether the Community Living Assistance Services and Supports Act would make the cut in the run up to the release of the manager's amendment. It is seen as a costly initiative, but during the first 10 years the program would pay out far less in benefits than it would receive in premiums, reducing deficits by about \$72 billion, including \$2 billion in savings to Medicaid, according to CBO's summary of Reid's amendment.

Senate Budget Committee Chair Kent Conrad (D-ND), once a critic of the CLASS Act, issued a statement over the weekend saying he was satisfied that the bill would prevent the funds from being used to pay for other measures. The lawmaker criticized Republican Leader Mitch McConnell (KY) for repeating Conrad's past suggestions that the CLASS Act is a "Ponzi scheme." Conrad said Saturday, "Senator McConnell took my words completely out of context, because that reference was to an earlier version of the legislation that used CLASS Act funding to pay for other provisions. That has now been changed."

Conrad stressed that Reid has agreed that no CLASS Act funds would be used to pay for other parts of the bill. "He is to be commended for being fiscally responsible. It is unfortunate that Senator McConnell has chosen to take my words out of context to misrepresent parts of this legislation," Conrad said.

The CLASS Act was mentioned over the weekend by several Republican senators as one of their key gripes with Reid's bill. Sen. Tom Coburn (R-OK) complained that the federal government has run the federal deficit up to \$1.4 trillion in 2009, and specifically mentioned the CLASS Act as a future driver of debt.

IMAB altered: Reid's revised bill alters the structure of the Independent Medicare Advisory Board, allowing members to make non-binding recommendations even if Medicare spending is not increasing at a faster rate than the national health spending, but still exempts hospitals and hospices and any other industry slated for a market basket increase from further cuts in the initial years.

A congressional aide told *Inside Health Reform* the IMAB language was changed so that in the years where Medicare spending does not grow faster than national health spending,

the IMAB will now be able to make “nonbinding” recommendations. The aide noted that hospitals aren’t carved out necessarily, but that any industry not slated to receive a negative update is not subject to IMAB’s recommendations. That includes hospices as well.

CBO Director Douglas Elmendorf on Sunday issued a correction to his initial score of Reid’s amendment, stating that while his estimate of the IMAB’s savings were correct in the first 10 years, he had overestimated the extent to which the IMAB would bring down the deficit in future years.

“CBO expects that the legislation, if enacted, would reduce federal budget deficits over the decade after 2019 relative to those projected under current law—with a total effect during that decade that is in a broad range between one-quarter percent and one-half percent of GDP,” Elmendorf said. His initial estimate implied a reduction in deficits in the 2020–2029 period in a broad range around one-half percent of GDP.

Home health cuts reduced: Reid’s package also reduces the bill’s cuts to the home health industry from \$42 billion to \$39 billion.

Cadillac tax retained: Reid’s package maintains the controversial tax. It does not increase the threshold for the tax on high-cost insurers – a policy strongly opposed by unions and businesses and other stakeholders – but does add longshoreman to the list of high-risk workers eligible for increased thresholds.

CHIP extended: Rockefeller took credit for Reid’s proposal to extend the Children’s Health Insurance Program (CHIP) for an additional two years. Under Reid’s proposal, states would have to maintain coverage levels for children under Medicaid and CHIP through 2019. In 2014, states would get higher federal reimbursement for CHIP beneficiaries, increasing from an average of 70 percent to 93 percent. The legislation would also provide states with additional CHIP funding in 2015. CBO and JCT estimate \$395 billion in additional net federal outlays for Medicaid and CHIP.

First Focus, which advocates for children, praised the provision, but added that “health coverage for millions of children remains in jeopardy and additional improvements, most importantly an evaluation of the new health insurance exchange, must be added if we hope to ensure that children are not adversely affected by health reform.” The group also said it wants to see CHIP strengthened and not repealed in the future.

Annual coverage caps eliminated: A new provision applauded by cancer care advocates bans annual coverage limits in all plans beginning in 2014. The American Cancer Society Cancer Action Network had raised concerns about the negative impact of the earlier bill’s annual benefit limits on many cancer patients. “Eliminating caps on both annual and lifetime limits in the Senate bill means families affected by cancer would no longer have to choose between lifesaving care and their life savings,” the group said Sunday.

Device industry tax adjusted: Reid's amendment would delay implementation of the device tax by one year, to 2011, and would increase the amount from \$2 billion to \$3 billion in 2018, according to a memo analyzing the amendment prepared by Jeffrey Kimbell and Associates. The memo says other pieces of the device tax remain the same: It is apportioned among the covered entities each year based on each entity's relative market share of covered domestic sales for the prior year. Class I devices are exempt and Class II devices sold to consumers at retail for less than \$100 per unit are also exempt.

“In determining each covered entity's relative market share, covered domestic sales will be taken into account as follows: 0 percent of sales up to \$5 million; 50 percent of sales over \$5 million and up to \$25 million; and 100 percent of sales over \$25 million. Fees assessed would not be deductible for U.S. income tax purposes,” the memo says.

This sliding exemption for companies with less than \$400 million in annual revenue will concentrate the tax on the remaining companies, which will effectively make it a higher tax rate, according to the memo. It notes that fees assessed would not be deductible for U.S. income tax purposes, and orphan drug sales would be exempt.

Botox tax scrapped: Reid's amendment eliminates a tax on cosmetic surgery, and replaces it with a tax on tanning salons, a move that a congressional aide said aims to address the cancer risks involved in tanning.

Preexisting condition provision extended to children: Under Reid's amendment, insurers would be banned from denying coverage to children due to preexisting conditions on the day the law is enacted. This is another change championed by Rockefeller.

Small business tax credit adjusted: The tax credit for small businesses would be made available to firms paying somewhat higher average wages, and it would first take effect in 2010 rather than 2011. The cost of the credit is estimated at \$40 billion over 10 years.

Penalty for no insurance: The penalty for not having insurance would be the greater of either a flat dollar amount or a percentage of an individual's income, which would increase the amount of penalties collected by \$7 billion.

Employer vouchers: Certain workers could get tax-free vouchers from their employers for use in buying coverage in the exchanges that otherwise would be unsubsidized. The vouchers, which would be adjusted for age, would be equal in value to the contributions their employers would make to their health insurance plans. CBO and JCT estimate that about 100,000 workers would use vouchers.

Insurer rebate requirement added: Among the new restrictions on insurers is a requirement that insurers provide rebates when their share of premiums spent on administration exceed specified levels. Also, plans would be prohibited from imposing annual benefit limits.

Community health centers get bump: Community health centers and the National Health Service Corps would receive an additional \$10 billion in mandatory funding.

Long-term costs unclear: Although the modifications only slightly changed the bill's costs, Reid acknowledged that major additional costs are expected over the long haul. "The legislation would maintain and put into effect a number of procedures that might be difficult to sustain over a long period of time," a summary of the manager's amendment states, pointing to the physician payment cuts as a prime example. The legislation also includes provisions that would constrain payment rates for other providers of Medicare services, the summary states, such as the assumption that health care productivity will increase at a rate that many believe is unrealistic.

While Elmendorf on Sunday revised his earlier estimates of the long-term savings associated with the bill's IMAB, he said that the manager's amendment would still reduce deficits further than would have the initial version of the legislation.

Cures Acceleration Network created. Reid's amendment includes a new provision, according to Jeffrey Kimbell and Associates, that would require the National Institutes of Health director "to establish a program to encourage/incentivize development of treatments that serve as 'high need cures' – cures for diseases 'for which the incentives of the commercial market are unlikely to result in its adequate or timely development.'"

The network would work with FDA to streamline protocols and ensure compliance with regulatory requirements at all stages of manufacturing, review, approval, and safety surveillance.

Gun owner-friendly provision added: Reid's package doesn't require individuals to disclose whether they own a gun, and says that gun ownership cannot be factored into premiums or coverage decisions.

Physician sunshine requirements delayed a year. The language in Reid's revised bill regarding disclosure of financial relationships with physicians is essentially the same as the Senate Finance Committee bill, but the initial reporting date is pushed back by one year, according to the memo by Jeffrey Kimbell and Associates. "Reporting requirement would begin on March 31, 2013 and continue on the 90th day of each subsequent calendar year. This is one year later than in the Finance bill," the memo states.

The provision, according to the memo, "would require any manufacturer of a covered drug, device, biological, or medical supply that makes a payment or another transfer of value to a physician, a physician medical practice, a physician group practice, or a hospital with an approved medical residency training program to report annually, to disclose specified information on such transactions to the Secretary of HHS."

Under the provision, federal law would preempt any state reporting requirements for items covered under the bill but would not preempt additional reporting requirements.

“Delayed reporting requirements would apply for payments made pursuant to a product development agreement or clinical trial,” according to the memo.

Key stakeholders applaud bill: Several key stakeholders praised Reid's package and urged senators to pass the bill, including the Federation of American Hospitals, which issued a statement Sunday applauding the bill's delivery system reforms.

The American Cancer Society Cancer Action Network (ACS CAN) wrote to Senate leaders stating the bill “includes a number of strong provisions that would significantly improve the health care system for cancer patients by refocusing the system to emphasize prevention; guaranteeing quality, affordable coverage regardless of pre-existing conditions; reducing the cost burden on families; eliminating lifetime coverage limits; covering routine health costs for those who enroll in clinical trials; and emphasizing patients’ quality of life.”

The group is particularly pleased by a new provision that would ensure coverage of essential health benefits until the health insurance exchange is set up and bans annual coverage limits in all plans beginning in 2014. The latter, the group says, would provide “financial protection for patients with serious health conditions should they face major medical expenses.”

First Focus praised the extension of CHIP, and as well as other provisions it says would have positive effects on kids, including the bill's insurance market reforms, pediatric specific benefits standards, and child-only coverage option in the exchange. Reid's package grants CHIP eligibility for the children of state employees, and would ban insurers from denying coverage to children for preexisting conditions immediately (adults would be given this same protection within a few years), the group notes.

The group also applauded provisions in the manager's amendment allowing children to stay on their parents' health plan through age 26, attributing the language to Sen. Mary Landrieu (D-LA).

But the group says it will continue to advocate for further improvements when the bill is merged with the House version.

GOP senators strongly object: In addition to protesting the manager amendment's inclusion of the CLASS Act, Republicans blasted Reid over the weekend for what they say is his unfair treatment of Medicaid in both Nebraska and Vermont, and for including other “special deals” that favor certain lawmakers. “This is about members exercising their own ability to get special deals for their states,” one GOP member stated.

Republicans also blasted Reid's abortion deal with Nelson as effectively leading the way for federal funding to be used for abortion for the first time since 1977, saying the provision, if enacted, would surely set up a Supreme Court challenge.

GOP members also blasted Reid's floor strategy, with one GOP senator saying, "This should be put off until after Christmas instead of being done in the dark night in a Washington snow storm."

Coburn's office lists earmarks: Staffers for Oklahoma Republican Sen. Tom Coburn compiled an e-mail, obtained by *Inside Health Policy*, listing what they view as inappropriate earmarks. The e-mail reads:

"Nebraska, Vermont, Massachusetts -- Adds three targeted state FMAP provisions. Specific FMAP bonuses for VT, MA, and NE (starting at page 96, line 9). VT gets a 2.2% FMAP increase for 6 years for their entire program. MA gets a 0.5% FMAP increase for three years for the entire program. NE gets 100% FMAP for newly eligibles forever.

"Hawaii - Hospital Inpatient Disproportionate Share Hospital extension (page 101, line6).

"Michigan, Connecticut -- Amends section 508 extension so that hospitals in Michigan and Connecticut have option to benefit under section 508 if it means higher payments. This was also done in previous legislation. Page 174 – section 10317.

"Montana, South Dakota, North Dakota -- Dorgan frontier amendment adds 1.0 hospital wage index for those states. MT, SD, ND and WY would qualify (AK and NV also qualify but would not benefit because they are already above 1.0 wage index value). p 208. Sec 10324.

"Libby, Montana -- Medicare coverage for individuals exposed to environmental health hazards in or around the geographic area subject to an emergency declaration as of June 17, 2009."