Health Care Outlook for 2011 and Beyond

The Legal, Policy and Political Landscape

Contact:
Mark L. Hayes | Shareholder | hayesml@gtlaw.com | (202) 331-3164
Overview

- Overview of Political Landscape
- Health Care
  - Congress
    - Health Care Reform Revisited
    - Budget and the Debt Limit
  - Administration
  - States
  - Providers, Plans and Employers
  - Courts
  - Agenda Outlook
Federal Spending Growing

Federal Deficits Climbing

Divisive Environment in 2010

RUBES® by Leigh Rubin

LISTEN, PAL, THE WAY I SEE IT, YOU HAVE TWO CHOICES. EITHER YOU CAN BE RIGHT, LIKE ME, OR YOU CAN BE AN UNWITTING DUPE OF THE LEFT, LIKE YOU!

© 2007 Leigh Rubin

Polarized bears
Foreign Holdings of U.S. Debt

46%

Source: Data from The United States Treasury, Treasury International Capital System, Major Holders of Treasury Securities, June 30, 2010; Compiled by PQPF.
Federal Health Spending Growing

**2035: 10% of GDP Total**
- Medicare: 6% of GDP
- Medicaid, CHIP and Exchange Subsidies: 4% of GDP

**2080: 17% of GDP Total**
- Medicare: 11-12% of GDP
- Medicaid, CHIP and Exchange Subsidies: 5-6% of GDP
Entitlements Growing

- Medicaid
- Medicare
- Social Security

% of GDP

- 4%
- 14%
- 6%

Fiscal Year

- 2010
- 2020
- 2030
- 2040
- 2050
- 2060
- 2070
- 2080
Landscape

Congress

Executive Branch

Private Market

State

Courts

GT GreenbergTraurig
Congress

The forecasted focus for 2011:

- The Economy
- Deficit Reduction and the Budget
- Health Care Reform
Congress

*Actual* Focus:

- Deficit Reduction and the Budget
- Deficit Reduction and the Budget
- Deficit Reduction and the Budget
For Health Care Reform

(1) House voted to repeal, but...
Then What...

- (2) Attempt to repeal pieces such as
  - 1099 reporting requirement (now repealed)
  - FSA limitations
  - CLASS Act
  - Insurance taxes and "medicine" taxes
  - Resolutions of Disapproval
    - As interim final rules become final rules and other final rules are issued, they are subject to the CRA
    - Grandfathered plans
But...

- Congressional Budget Office and budget realities (e.g. repeal scored as a $230B cost)
- Investments in implementation are being made
- And, a dilemma -
  - If efforts to repeal the most objectionable elements are successful...
  - Strategically, some will say this makes it harder for full repeal later.
So therefore, focus is on...

- (3) Targeted Efforts
  - Investigations
  - Subpoenas
  - Block or Limit funding for implementation
  - Hearings
Due to budget cuts, the light at the end of the tunnel has been turned off.
Interest on the Debt

- Interest payments on the federal debt will quadruple in the next decade.
- In 2014, interest payments will surpass federal spending for education, transportation, energy, and all other non-defense discretionary spending.
- In 2018, spending for interest on the debt will exceed Medicare spending.
The Debt Ceiling

- Has to be increased by late June
- Tea Party Conservatives insisting on budget reforms and spending reductions as a condition of raising the debt ceiling
- A series of small increases in the debt ceiling is possible
  - Down payments on deficit reduction will be necessary
  - Would buy more time for negotiations
Timeline for Budget Issues

- April: Pass Measure to Fund Government Through FY2011
- April-June: Congressional Budget Debate
- May-June: Debate to Raise Federal Debt Ceiling
- June-December: FY2012 Appropriations
  - Omnibus?
- December: Medicare and Medicaid Must-Pass Bill
The Debt Ceiling

Pushing the Limit
The federal debt ceiling, in trillions

Current ceiling: $12.1 trillion

Source: Office of Management and Budget
What to Watch

- House Budget Chairman Paul Ryan's proposals:
  - Block grant Medicaid for LTC
  - Change acute care Medicaid into an HSA-like model
  - Premium support model for Medicare

- Senate Bipartisan Group: Durbin, Conrad, Coburn, Crapo, Warner, Chambliss

- How will President Obama engage

- To what extent will this be a vehicle for changes to the ACA
What does this mean for health care reform implementation?

Implementation Outlook
The Administration

- Continued and feverish work on implementation
- Will keep working to mitigate problems with groups adversely affected (e.g. mini-med plan waivers)
- Expect more open door forums, RFIs on implementation issues
The States

- Exchange implementation
- Conforming state law and regulations (NAIC model law)
- Making decisions on approach - regulatory vs. free-market or hybrid
- Forge ahead with own reforms
- Medicaid reforms
Providers, Plans and Employers

- Plans determining whether to enter new markets
- Employers determining what to do with their health coverage
  - Defined benefit vs. defined contribution
- Providers adjusting for impact of reforms and testing new payment models through CMMI
Courts

- Will the Supreme Court find the individual mandate unconstitutional?
- What result from the lack of a severability clause?
- And if this happens, what happens after that?
Legal Analysis
Potential Scenarios

Supreme Court

- Strikes down individual mandate alone - no severability
  - The absence of the individual mandate would cause market disruption. Congressional intervention would be required

- Strikes down all coverage provisions
  - Private coverage and Medicaid expansion void

- Strikes down private coverage provisions
  - Medicaid expansion remains. Congress would have to agree to and pass new private coverage provisions

- Strikes down the entire ACA
  - Coverage, delivery system and financing provisions void

- Finds individual mandate constitutional
  - No change
Agenda Outlook

- General rule: Gridlock
- Budget negotiations - something has to happen to enable raising the debt ceiling
- Must-pass end-of-year bill
Questions
Provisions that we’ll likely be hearing about.

A Laundry List
Laundry List - Coverage

- Repeal individual mandate and substitute alternative risk spreading mechanisms
- Broaden the grandfather plan provisions - allow employers that offer coverage to continue to offer it without changes
- Loosen the standards for plans in the Exchange
- Expand HSAs - repeal limitations
- MLR repeal or changes
Laundry List - Taxes

- Repeal health care related tax increases:
- Three health insurance taxes:
  - to fund comparative effectiveness research (CER)
  - to fund reinsurance
  - to provide general revenues
- Excise tax on medical devices
- 1099 changes (repealed)
Laundry List - Medicare

- Delay cuts to Medicare Advantage- substitute fixed benchmarks to benchmarks set by competitive bidding
- IPAB repeal
- Reinstate full retiree drug subsidy
- Longer term doc fix?
Laundry List - State Flexibility

- Increased state flexibility generally
- Expanded state waiver process (Wyden)
- Domicile-based regulation of insurance to permit interstate sale
- Exchange reforms - eliminate regulatory powers, actuarial equivalence standard only for qualified health plan
2012

- How will voters view health reform in 2012?
- How will deficit reduction efforts impact election outlook?
- To be successful, GOP needs a viable, workable set of policies that could be enacted in place of the ACA