



# Healthcare Reform Update

**January 11, 2010**

To our friends and clients:

Dechert's Health Law Practice monitors developments related to healthcare reform and periodically issues a **Dechert Healthcare Reform Update**. Each Update provides the latest information on efforts by the Obama administration and Congress to reform healthcare.

## Healthcare Reform in the New Year: A Comparison of the Senate and House Bills

Negotiations between the Senate and the House are currently underway to craft the next steps in finalizing a Healthcare Reform bill. Under the usual reconciliation process, Congress would form a Conference Committee to work out differences in the bills. The Senate and House appear likely to bypass a formal Conference Committee and instead work out an informal agreement between top House and Senate Democrats and thereby avoid further delay efforts in the Senate.

The informal arrangement circumvents no fewer than three motions to start the Conference Committee process, all of which have the potential to cause delays. Once an informal agreement is struck, the bill will be scored by the Congressional Budget Office, then go to the House for passage, then to the Senate, and then to the President.

There are some major issues to be reconciled before a final bill can be sent to the President for his signature. Some of the more challenging issues include:

- Creation of a public plan option;
- Expansion of the scope of the Independent Medicare Advisory Board that would be required to recommend changes to the Medicare program to limit its spending growth;
- Agreement on tax structures to pay for the bill (a new tax on high-value health insurance plans vs. income tax surtax on higher income individuals
- Elimination of the antitrust exemption for insurance companies; and
- The method for disallowing subsidies for abortion coverage except for rape, incest, or to save the life of the mother.

With regard to health insurance reform, there are enough similarities in the two bills to predict that, if passed, most Americans, with some hardship exceptions, will be required to have health insurance or pay a penalty. Under the bills, coverage could be purchased through a healthcare exchange with premiums and cost-sharing credits available for those with incomes lower than 400% of the poverty level. With certain

exceptions, small businesses could participate in an insurance exchange or obtain a credit for providing coverage to their employees. Eligibility for Medicaid would be expanded. Effective this year, dependent children would be eligible for coverage under their parents' private plans until age 26 (27 under the House bill). Temporary high-risk pools would be established to provide coverage to people with a pre-existing medical condition with a cap on premiums. Private insurance plans would be limited in their exclusions for pre-existing conditions. Lifetime dollar limits on coverage would be eliminated. Insurance companies, at the minimum, would have to report their medical loss ratio (under the Senate bill, this ratio would be .85, with certain exceptions for individual and small group plans to allow a ratio of .80; under the House bill this ratio would be .85), and would have to pay rebates when this ratio drops below .85.

Medicare pilot or demonstration programs would be created to address quality of care issues, including but not limited to bundled payments for episodic care and formation and evaluation of medical homes to offer primary care services to high-need Medicare beneficiaries.

To view a chart that compares the House and Senate bills with respect to issues that may be of particular interest to Dechert clients, please [click here](#).

If healthcare reform legislation is passed by both the House and Senate and is signed by the President, the road ahead involves massive rulemaking efforts. The executive branch will be faced with the Herculean task of drafting federal rules to implement the legislation. In addition, many feel that technical, and perhaps non-technical, amendments will be needed given the massive scope of the legislation.

### For More Information

If you have questions regarding the information in this update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed.

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