

# High-Stakes Health Care Agenda Taking Shape in the 106th Congress

As Congress returns from the President's Day recess and begins work on the heart of its short legislative calendar this year, health care issues figure prominently. The political stakes this year are especially high – many observers believe that how Congress addresses these issues may well determine control of the House of Representatives (where Republicans hold a razor-thin, 11-vote margin), and may have significant repercussions for the Presidential election as well.

Most of the attention to date has focused on two issues: expansion of Medicare to include an outpatient prescription drug benefit, and managed care reform. Both of these issues are white hot politically. Democrats, who have historically used health care as a political wedge against Republicans, view these issues as potent electoral weapons. Many Democrats, pundits contend, are prepared to exact the maximum political pay-off in the Fall should Congress come to an impasse on these issues this year. For their part, Republicans clearly are playing defense. Many GOP members have little appetite for imposing more regulation on the managed care industry, and are skeptical that a Medicare drug benefit can be added without exacerbating the already precarious financial condition of the Medicare program. At this point in the political year, it appears certain, in any event, that a serious Congressional debate on these issues will be had.

Moreover, the Republican leadership seems likely to embrace proposals considerably more ambitious than in years past, and that are a long way removed from the philosophical comfort zone of many GOP members. How did congressional Republicans find themselves in this predicament? The events of the past few months are a testament to the volatility of health care as a public policy issue and to the numerous pitfalls and opportunities it presents to policymakers.

**Prescription Drugs.** Twelve months or so ago, it was far from certain that the 106th Congress would seriously consider expanding Medicare to include prescription drugs. In March 1999, the Bipartisan

Commission on the Future of Medicare, the panel formed under the Balanced Budget Act of 1997 to examine Medicare's long-term prospects, failed to reach consensus on recommendations for reform. Instead, a bare majority of the commission's members (not the supermajority required to make a formal recommendation to Congress under the commission's charter) released a proposal to transform Medicare into a so-called "premium support" program, under which beneficiaries would be encouraged to enroll in private managed care plans to receive Medicare benefits. Under this proposal, such plans would be required to make available a "high option" that would include prescription drugs. Government subsidies for this "high option" would be available only for low-income beneficiaries.

Thus, the commission's plan called for providing a prescription drug benefit only in the context of comprehensive Medicare reform and only insofar as it targeted low-income beneficiaries. Throughout much of last year, this was the position of most GOP members and some leading Democratic moderates, such as commission co-chairman Sen. John Breaux (D-LA). The Clinton Administration and most congressional Democrats strongly opposed the commission proposal, contending that "premium support" would usher in the demise of fee-for-service Medicare. Given the entrenched positions of the two sides, and the inherent difficulty of enacting comprehensive reform of a complex public program such as Medicare, the stage seemed set for an impasse on this issue that would extend at least through the 2000 elections.

In the past few months, however, the ground has shifted considerably. Now, the conventional view is that Congress will set major Medicare reform to one side and actively consider a stand-alone drug benefit measure. Even Rep. Bill Thomas (R-CA), the chair of the House Ways and Means Health Subcommittee and co-chair of the Medicare commission, recently announced at a hearing that, while still favoring comprehensive reform, he is "open to new ideas" about expanding the drug benefit. In recent weeks, both parties

have been angling for the political high ground in crafting such proposals.

The leading Democratic proposal is the Administration's plan to provide an optional drug benefit for every Medicare beneficiary. Under this proposal, beneficiaries would pay a \$26 per month drug benefit premium in the first year, which would increase to \$51 per month by 2009. Beneficiaries would be responsible for 50 percent of incurred costs, with total benefits capped at \$2000 in the first year and increasing to \$5000 by 2009. The plan relies on private pharmacy benefit managers (PBMs) under contract with the Medicare Program to administer the benefit and contain costs. To ensure that low-income seniors are not priced out of the benefit, the Administration would eliminate premiums and cost sharing for Medicare beneficiaries with incomes below 135 percent of the federal poverty level, and give partial assistance to individuals whose incomes fall between 135 percent and 150 percent.

Critics charge that, in its eagerness to provide a benefit to every Medicare patient, the Administration is simply offering beneficiaries a bad deal. By way of illustration, they point out that when the Clinton plan is fully phased in, a beneficiary would pay more than \$3000 out-of-pocket for the first \$5000 of benefits, and would be fully responsible for all costs incurred above the \$5000 cap. (In response to such complaints, in its fiscal year 2001 budget, the Administration indicated it would add a stop-loss feature to its proposal, although it has yet to spell out the details.) Concerns have also been raised about the administration of the benefit. If the benefit were to be administered by PBMs or other private entities under contract with the federal government, the pharmaceutical industry argues that the concentration of purchasing power in a single entity (the proposal calls for one PBM to administer the benefit in each region) would exert an inordinate downward pressure on prices that could cripple research on state-of-the-art drug therapies.

On the Republican side, a task force of House Commerce Committee members is hard at work on a counter-proposal. One

important feature of many of the GOP prescription drug proposals under consideration is that they focus on conferring benefits on low-income seniors. The Clinton plan, by contrast, would confer benefits on all Medicare beneficiaries. Many of the GOP proposals also attempt to provide a safety net for seniors who incur drug expenses of a catastrophic nature (an element that the Administration has now embraced as well).

Whether this approach will be sufficient to forestall significant political fallout is an open question. The Republican efforts are hampered by the ideological discomfort that many members feel about expanding the drug benefit without tackling Medicare's long-term structural problems. An additional complication is that traditional Republican allies in the business community – chiefly, the pharmaceutical and insurance industries – are not speaking with one voice on this issue. Some pharmaceutical companies, for example, are pressing a proposal that would provide a new drug benefit through private, drug-only insurance policies. This approach is opposed by the insurance industry, on the ground that only seniors with high drug expenses would enroll in such plans, forcing carriers to sharply raise premiums. Other pharmaceutical companies reportedly have shown interest in a state-based approach similar to that in legislation introduced by House Commerce Health Subcommittee Chair Rep. Michael Bilirakis (R-FL). Under the Bilirakis bill, states would receive federal matching funds to provide pharmacy assistance to low-income seniors. To complicate matters further, relations between the pharmaceutical industry and congressional Republicans reportedly are strained because of a perception by some members that, in discussions with the White House on this issue earlier this year, the industry too quickly abandoned its position of conditioning support for an expanded drug benefit on the enactment of comprehensive Medicare reform.

Democrats have a potential political ace in the hole. If efforts to expand the Medicare drug benefit run aground, the Democratic leadership is likely to offer up a controversial bill sponsored by Rep. Tom Allen (D-ME) that would allow seniors to buy prescription drugs at Federal Supply Schedule prices. Unlike an expanded drug benefit, this proposal would not require the expenditure of additional public monies.

Although virtually all Republicans adamantly oppose this approach on philosophical grounds and can argue persuasively that the plan is unworkable and counterproductive, Democrats might be able to apply intense political pressure to force a vote on this measure. Toward that end, Democrats recently filed a discharge petition to require consideration of the bill on the House floor although, to date, they have not obtained the necessary 218 signatures.

A Medicare prescription drug benefit has yet to surface as an important issue in the presidential race, but figures to be the focus of intense debate following the party conventions. Vice President Gore's position is virtually identical to the Administration proposal. The positions of Texas Gov. George W. Bush and Sen. John McCain (R-AZ), on the other hand, are not completely fleshed out. It seems likely that the GOP nominee will take his cue on this issue largely from developments in Congress.

**Managed Care.** A similar scenario has unfolded in the longstanding debate on managed care reform. Last July, Senate Republicans seemed on the verge of defusing this issue politically for the immediate future when they passed a managed care reform bill with the nearly unanimous support of the Republican caucus. While refusing to include any provision that would countenance tort liability for federally regulated plans – the single most controversial reform issue – Majority Leader Trent Lott (R-MS) and Majority Whip Don Nickles (R-OK) cobbled together a bill sufficiently broad to appeal to moderate Republicans. For example, the bill requires coverage for a minimum hospital stay for mastectomies for the treatment of breast cancer and for secondary consultations to confirm a cancer diagnosis, issues that are a high priority of Maine Senators Susan Collins and Olympia Snowe. Significantly, the Senate-passed bill, while containing a panoply of access to care requirements comparable to those in Democratic reform proposals (e.g., access to specialists), has a narrower scope insofar as these mandates apply generally to federally regulated plans under the Employee Retirement Income Security Act, but not to plans regulated under state law.

Notwithstanding this more limited coverage and the absence of a tort liability provision, at the time of passage, many

pundits feted the Republican leadership for moving a bill that could be used to beat back political pressure to pass managed care reform, but that had no prospect of actually garnering Democratic support and being enacted into law. In the end, it appeared that the GOP would succeed in ensuring the outcome most fervently desired by the managed care industry – a stalemate that would produce no federal legislation.

In the intervening months, this scenario has unraveled. First, with the support of 68 Republicans and under the leadership of maverick Republican Charlie Norwood (GA), the House passed a managed care reform bill that provided for tort liability and applied broadly to all health plans, including state-regulated plans. Soon after passage, the House GOP leadership appointed conferees for the House-Senate conference, only one of whom had actually voted for the House-passed bill. Not surprisingly, this drew howls of protest from Norwood and other Republican supporters of the House bill. At present, most observers believe that, regardless of the make-up of the conference, the political winds are blowing in the direction of the House-passed bill. Republican leaders, including Sen. Lott and House Majority Leader Dick Armey (R-TX), reportedly have indicated a willingness to accept a limited right to sue in federal court. Although Democrats reportedly are pressing for a more expansive liability provision, the two sides appear to be moving toward a compromise. A wider gulf appears to exist between the parties with respect to the scope of the legislation (all plans, or just federally regulated plans).

Thus, with regard to both Medicare prescription drugs and managed care reform, the congressional Republican majority faces the daunting prospect of steering a course that will be consistent with its ideology and still win the support of industry, while at the same time be capable of withstanding the intense criticism that will inevitably be leveled by Democrats. Whether they succeed may help decide the composition of the first full Congress of the 21st century, the next occupant of the White House, and resolution of two of the most vexing health policy issues Congress has tackled in many years.

—David H. Eisenstat  
—Jorge Lopez, Jr.