ASSURANT Health

April 2009 Legislative Update

FEDERAL AFFAIRS

President Barack Obama is working with the 111th Congress in which Democrats hold a 257-178 majority in the House of Representatives and a 57-41 majority in the Senate. Senator Joe Lieberman is an Independent who caucuses with the Democrats and the Minnesota Senate race is awaiting the outcome of legal challenges.

Legislation Passed in 2009

Children's Health Insurance Program

The first health care issue addressed by the Congress was reauthorization of the **State Children's Health Insurance Program (SCHIP)**. On February 4, President Obama signed H.R. 2, the "Children's Health Insurance Program Reauthorization Act of 2009." Enactment of the legislation officially changed the name of the program to the Children's Health Insurance Program -- CHIP -- instead of SCHIP. The bill had bipartisan support and the new law establishes eligibility at 300% of the FPL.

The new law increases federal funding by $32.8 billion over the next five years; the cost is offset by an increase in the federal excise tax on tobacco products. The increased funding is expected to maintain coverage for 6.7 million children currently enrolled in state CHIP programs and to allow states to expand coverage to an additional 4.1 million children.

Economic Recovery and Reinvestment Act of 2009

On March 6th, Congress passed H. R. 1 - the "Economic Recovery and Reinvestment Act of 2009." Several health care provisions were in the bill, including Health Information Technology (Health IT) and related privacy restrictions, among other topics. Key provisions include the following:

Health Information Technology

- $17.2 billion is provided through Medicare and Medicaid to promote adoption of Health IT by physicians, hospitals, and other providers.
- The bill gives statutory authority for an Office of the National Coordinator for Health Information Technology (ONCHIT) and assigns specific responsibilities to this entity, including considering the recommendations of a new Health IT Policy Committee and a new HIT Standards Committee. The Health IT Policy Committee will make policy recommendations to ONCHIT on the implementation of a nationwide Health IT infrastructure. The Health IT Standards Committee will make recommendations to ONCHIT about standards, implementation specifications, and certification criteria for the electronic exchange and use of health information. ONCHIT is directed to report its determinations to the HHS Secretary within 45 days after receiving recommendations from the Health IT Standards Committee, and the HHS Secretary is directed to issue Regulations by December 31, 2009, outlining an initial set of standards, implementation specifications, and certification criteria. The bill provides $2 billion to ONCHIT to carry out these and related activities.

Privacy

- The bill includes a national data breach standard that requires individual consumers to be notified if their health information is accessed, used, or disclosed.
- Entities that use electronic health records must account for all disclosures made, even for treatment, payment, and health care operations. However, the HHS Secretary is required to issue Regulations which consider the administrative burdens associated with tracking such disclosures. The HHS Secretary is also given discretion to delay the effective date for the disclosure accounting requirement.
- Prohibitions on marketing still allow for prescription refill reminders and other communications for health-related products or services.
- The bill's privacy provisions, like existing Regulations, apply to HIPAA-covered entities, their business associates and entities that qualify as vendors of personal health records.

Comparative Effectiveness Research

- $1.1 billion is allocated to accelerate the development and dissemination of comparative effectiveness research. This funding must be used to support research that compares the "clinical outcomes, effectiveness, and appropriateness" of medical treatments and therapies. It also must encourage the development and use of clinical registries, clinical data networks, and other forms of electronic health data. Of the $1.1 billion, $300 million will be administered by AHRQ, $400 million by NIH, and another $400 million by the HHS Secretary.
- "Federal Coordinating Council for Comparative Effectiveness Research" is established to foster coordination of comparative effectiveness and related health services research conducted or supported by the federal government. The goal is to reduce duplicative efforts and encourage coordinated and complementary use of resources.

Prevention and Wellness

$1 billion is allocated for a new "Prevention and Wellness Fund", with $650 million dedicated to carrying out evidence-based clinical and community-based prevention and wellness strategies to deliver specific, measurable outcomes for chronic disease rates.

High Risk Pools

On March 11th, President Obama signed the Omnibus spending bill into law. The bill appropriates $75 million in federal funding for the creation and operation of State High Risk Pools. This is a 53% increase over the amount of funding provided in the prior fiscal year ($49.1 million). State High Risk Pools provide coverage for individuals with serious and/or chronic medical conditions.

White House "Forum on Reform"

On March 5, President Obama hosted nearly 150 lawmakers, health policy experts, lobbyists, business owners, and representatives from consumer advocacy groups and labor unions in a "Forum on Health Reform." President Obama said that health care reform is a "fiscal imperative," and he aims to enact health care reform legislation by the end of 2009. The President stressed that maintaining the "status quo" for the accessibility and affordability of health care coverage for the average American is not an option and threatens the very viability of the U.S. economy. In addition, the President acknowledged that reaching consensus among political parties and special interest groups will be difficult, but urged attendees to understand and accept that no health care reform law will be perfect and compromises will be needed. The attendees broke into five breakout sessions to discuss such topics as universal health care

coverage, chronic disease treatment and the associated high costs, and best approaches to managing the rising costs of health care.

Current Issues

Health Care Reform in Motion

President Barack Obama held his health care summit at the White House in March (above) and several proposals are being circulated in Congress. Senate Finance Committee Chair Max Baucus's (D-MT) reform proposal, titled "Call to Action, Health Reform in 2009" is getting the most attention early in this 111th session of Congress. However, Senate Health, Education, Labor and Pensions Committee Chair Ted Kennedy (D-MA) and his staff also continue to meet with stakeholders frequently and regularly to develop their own health reform legislation. Democratic Senator Ron Wyden (OR) and Republican Senator Bob Bennett (UT) have also introduced legislation, the "Healthy Americans Act", which is supported by several colleagues from both sides of the aisle. There are also those in Congress who would prefer that the government take over the health insurance industry and create a single payer system. The latter is very unlikely to happen.

Several committees in both houses of Congress continue to hold hearings on health care reform, but House and Senate Leadership have indicated that they would like a bill to be ready by September. If a compromise fails to emerge by September, the House Leadership is pushing for a legislative process that will allow passage with simple majorities in both chambers. This will be accomplished through a process called "budget reconciliation." Under the reconciliation rules, filibusters are not permitted, thereby enabling the Senate to move legislation forward with a simple majority of 51 votes instead of the 60 needed to end a filibuster. Democrats currently hold 58 seats in the Senate (this count includes two independents who caucus with them).

In late March, Senator Evan Bayh (D-IN) announced that 16 moderates in the Senate (15 Democrats and one independent) have come together to provide a united, centrist voice to issues such as health care reform. Their stated goal is "to pursue pragmatic, fiscally sustainable policies across a range of issues, such as deficit containment, health care reform …" and others. With 16 members, this caucus, currently dubbed the "Moderate Dems Working Group" represents more than a quarter of the Democrats serving in the Senate. If even 10 of these centrists stick together, they'll need to be part of any deal struck on health care reform. The 16 members of the Moderate Dems Working Group include:

- **Evan Bayh** (IN) - co-chair
- **Mark Begich** (AK)
- **Michael Bennet** (CO)
- **Tom Carper** (DE) - co-chair and a member of the Senate Finance Committee
- **Kay Hagan** (NC) —Senate HELP Committee
- **Herb Kohl** (WI)
- **Mary Landrieu** (LA)
- **Joe Lieberman** (CT)
- **Blanche Lincoln** (AR) - co-chair and a member of the Senate Finance Committee
- **Clare McCaskill** (MO)
- **Ben Nelson** (NE)
- **Bill Nelson** (FL) — Senate Finance Committee
- **Mark Pryor** (AR)
- **Jeanne Shaheen** (NH)
- **Mark Udall** (CO)
- **Mark Warner** (VA)

Mr. Hamm Goes to Washington

CEO Don Hamm traveled to Washington, D. C. for meetings on March 30 through April 1 to address the Capitol Conference of the National Association of Health Underwriters (NAHU), to meet with agents, and to meet with Senate and House Members on health system reform.

At the NAHU conference, Don encouraged attendees (750) to educate their own Members of Congress on the value of the agent to the buying consumers – that while NAHU does a great job in Washington, members of Congress connect in a different way with their constituents. If possible, agents should have their clients also contact the Member. There is unprecedented activity on Capitol Hill right now, and we expect it to continue. All of us must do everything we can to help Congress understand how the market and the system work.

Don has actually spent several days on Capitol Hill with Senate and House leaders and other Members and staff over the last three years, and has developed trust and credibility as a progressive reformer who is committed to help find a way for every American to have health insurance coverage. Toward this end, Don met with Senator Max Baucus, Chair of Senate Finance Committee whose reform proposal seems to be moving the most quickly. After meeting with the Senator, Don also met with Finance Committee staff to continue his work with them on details of an individual requirement to buy coverage, enrollment and enforcement. That work will continue. In addition, Don met with Assurant Health's Congresswoman, Gwen Moore (D-WI).

STATE AFFAIRS

Healthcare continues to be a major focus of state legislatures in 2009. Many states would like to address the high cost of health insurance and the uninsured. The economy and state budget deficits, however, have limited the number of comprehensive health care proposals introduced thus far. This has led to many legislative proposals that have a substantial impact on the healthcare market but do not have a fiscal impact on the state budget. Minimum loss ratios, exchange/connector, uniform application and autism are just a few of the issues which have been proposed. Below is a high level brief synopsis of many of the issues. Thus far we have been successful battling many of these proposals, but the legislative sessions continue.

Alaska: SB 61 would create a Massachusetts-style Connector for the individual and small group markets. The legislation is pending with the Senate Labor and Commerce Committee, and has not advanced.

California: Several bills that were vetoed by Governor Schwarzenegger at the end of the 2008 legislative session have returned in 2009. These include proposals to impose an 85% minimum loss ratio on individual medical and small group insurance plans and anti-rescission legislation that would require the Department of Insurance to develop a pool of application questions that all insurers would be required to use. Thus far the bills have not moved because California has been focused on budget issues. Many state employees were temporarily furloughed and asked to work days without pay. The governor recently signed a budget compromise that may still leave the state as much as $15 billion in the red. However, we do anticipate that the bills will be considered during this legislative session.

Florida: Bills that would impose an 85% minimum loss ratio on individual and small group insurance plans have been introduced in both houses of the legislature. However, the Office of Insurance Regulation (OIR) strongly opposed the bills. In a statement distributed to legislators, the OIR argued that imposing a mandatory minimum loss ratio would harm consumers by limiting the OIR's authority to ensure that health insurance benefits bear a reasonable

relationship to the premium charged. The OIR's opposition is expected to inhibit the bills' advancement.

Georgia: Bills that would have required coverage of autism-related disorders advanced in both the House and Senate, but ultimately failed to garner enough support and were defeated.

Illinois: An amended version of House Bill 3923 is moving through the legislature. The original version would have imposed an 85% minimum loss ratio and community rating on the entire health insurance market. The amended version removes the community rating requirement, but would:

- Impose a 75% minimum loss ratio on both the individual and small group health insurance markets;
- Require the Division of Insurance to develop a uniform application for the small group market;
- Require the Division of Insurance to develop a "standard individual market health statement," which would be the only method that carriers would be able to use to determine the health status of an individual; and
- Establish an "Office of Consumer Health Insurance" within the Division of Insurance, which would have the power to overturn an external review decision in favor of the carrier, if the external review decision is found by the Director, with consultation from a licensed medical professional, to have been "arbitrary and capricious."

Iowa: A State-run health insurance Exchange was recently gutted from SF 389 by the House Human Resources Committee on a unanimous vote. The amended legislation will be sent to the full House for a vote. However, the previous week, the Senate approved SF 389 containing the Exchange mechanism on a party-line vote. The two versions of the legislation will have to be reconciled thus there is the potential for the Exchange issue to return.

Kansas: HB 2290 would expand small employer rate bands from +/-20% to +/-35%. We are working with local agents and AHIP to support passage of HB 2290. The bill is pending with the House Insurance Committee.

Maryland: The Insurance Department is advocating legislation, SB 79, which would require a minimum loss ratio of 80% for individual plans and 85% for group plans. Fortunately, the Senate Finance Committee removed the minimum loss ratio requirements before it passed the bill. As currently written, SB 79 requires a study of minimum loss ratios. The Senate passed SB 79 and referred the bill to the House where we don't expect any changes.

Minnesota: HB 2163 and companion bill SB 1905 would expand the definition of small employer from 2-50 employees to 2-100 employees, and it would also require the Insurance Department to develop a uniform application for the small employer market. Such form would be submitted to the Legislature in 2010 for approval. Neither bill has advanced from its respective Committee.

Michigan: Blue Cross Blue Shield of Michigan (BCBSM) individual market reform legislation.

The political environment in Michigan remains the same and consists of a democratically-controlled House, a Republican-controlled Senate and a Democratic Governor. BCBSM still remains powerful on the political scene and Assurant Health is still a member of a larger coalition opposing BCBSM's reform proposal.

The House Insurance Committee, chaired by Representative Corriveau (D), a proponent of BCBSM, has held a hearing every Tuesday for the last several weeks on substantive insurance issues related to the individual market. The House has vowed that its hearing process will result in an individual market reform package. The Governor and the Insurance Commissioner are likely to support the House package.

The Senate has been supportive of the private insurance industry. Senator George (R) has been busy holding work group "meetings" in Lansing and around the State on substantive insurance topics. The Senate is expected to introduce a reform package sometime later in April.

Missouri: An autism mandate bill is advancing through the legislature. As currently drafted, the bill mandates coverage of autism-related disorders up to age 18 with no limits on patient visits and a separate annual limit of $50,000 for behavioral therapy. The bill would require coverage by all group plans, but coverage would be at the option of the insured for all individually underwritten plans. Short-term plans would be completely exempt from the mandate. We are working to exempt both individual medical and small group plans from the legislation.

A bill that would require the Department of Insurance to develop a uniform application for all group plans is pending in the House, but has not advanced since passing its initial committee in early March.

A bill that would amend the health insurance prompt pay law by imposing an onerous penalty of one-fifth of the claim for every day the payment is late passed its initial committee in the Senate. However, the bill is expected to face stiff opposition from Senate leadership and from key legislators in the House should it advance that far.

Montana: The Senate passed SB 142 which would allow health insurers to use gender as a rating factor. We are working closely with local agents and AHIP to support passage of SB 142. Gender rating was eliminated in 1985. The legislation is currently pending with the House Business and Labor Committee.

New Hampshire: HB 678 would impose a minimum loss ratio of 85% for individual medical and group coverage. HB 434 would require guarantee issue of a State-designed health plan to individuals. Both bills are pending with the House Commerce Committee and have not advanced.

Existing law limits Short Term Medical plans to a duration of no more than 6 months, and we cannot issue an STM plan if the person had been covered by more than 2 plans in the prior 12 months. The House passed HB 237 which would remove the existing requirement (2 plan limit in the prior 12 months), and it would allow a maximum of 18 months of STM coverage in any 24 month period.

New Mexico: House Bill 111 was tabled in the Senate Corporations and Transportation Committee and ultimately died, as the New Mexico legislature adjourned on March 21. The bill sought to require insurers to spend at least 85 % of premiums for “direct services” across most health product lines. Sponsored by Representative John Heaton (D) on behalf of Governor Bill Richardson (D) as part of his healthcare reform package, House Bill 111 had previously passed the House with a unanimous vote.

Oklahoma: A bill that would impose restrictive prompt pay requirements in Oklahoma has passed the House, but faces substantial procedural hurdles going forward. The bill contains “pay and chase” provisions that would require health carriers to pay claims before conducting inquiries into their validity and would also impose severe late payment penalties that could run into the hundreds of thousands of dollars. To date, the bill has not been called in the Senate Insurance Committee, and if it does pass the Senate, it must return to the House for another vote before becoming law.

Oregon: HB 2009 would create a Massachusetts-style Connector for the individual and small group markets. The legislation is pending with the House Health Care Committee and has not advanced.

Pennsylvania: Two of the four Blue Cross/Blue Shield companies in Pennsylvania (Independence Blue Cross and Highmark) are advocating for HB 746 which would impose modified community rating on all small group carriers in the market and would prohibit the use of health status as a rating factor. It would also impose an 85% minimum loss ratio, and file and approval for small employer rates.

Since 2002, this particular issue has been debated in the Legislature with no agreement reached between the House and the Senate. Specifically, each chamber would pass its own small group rating reform legislation, but the other chamber would never agree to their bill thus ending in a stalemate.

We continue to work to oppose this effort by Blue Cross/Blue Shield.

South Carolina: The Department of Insurance is once again running its South Carolina HealthNet proposal: a Massachusetts-style connector for small employer plans. However, thus far, this bill has not advanced out of committee.

Tennessee: The Department of Insurance is proposing a 70% minimum loss ratio for individual medical and small group plans, but this proposal has yet to be introduced in a bill.

A bill that would require the Department to develop a uniform application for small group plans has been filed, but has not advanced out of its initial committee.

Texas: Multiple bills proposing minimum loss ratios for individual medical and small group plans have been filed. The bills range from a proposed 85% minimum loss ratio (MLR) for all plans, to a 75% MLR for group plans and a 65% MLR for individual plans, to having the Department set the MLR. At present, the prospects for these proposals advancing as separate bills is not substantial. However, the entire Texas Insurance Code is scheduled to "sunset" (expire) this year. As a result, the entire code must be put forward as a renewal bill. This process opens the door for last-minute floor amendments of all sorts. We will monitor the situation carefully to guard against these proposals being inserted in the code through the amendment process.

Several bills seeking to add transparency to the health care process have also been filed. These bills would require appropriate disclosures by non-network physicians in network hospitals as to their ability to "balance bill" network patients. Physician groups have been working to amend these bills to shift the transparency burden entirely to insurers. We will work to ensure that an appropriate balance regarding transparency requirements is maintained.

Utah: In 2008, Utah passed legislation which requires health insurers to use a uniform application for the individual and small group markets by July 1, 2009. Since last year, Assurant Health has been working closely with the state and national trade associations to assist the Insurance Department with shaping the health statement questions in the application. Most recently, the industry persuaded the Department not to have one application for the individual and group markets, but have one application for each market. Also, the Department was receptive to the industry's request that on-line applications would be exempt from this requirement until July 1, 2010.

Wisconsin: Governor Jim Doyle's budget bill (AB 75) contains several health insurance reforms supported by the Insurance Commissioner. These include the following:

1. The Insurance Department must create a uniform application for the individual medical market;
2. would allow for independent review of rescissions and pre-existing exclusion denial determinations;
3. would limit to one year the pre-existing condition exclusion period for individual health insurance plans;

4. would limit the "maximum look back period" for pre-existing conditions to one year; and
5. would allow an insured to cover their unmarried dependent children through 26 years of age under their health plan.

There are also two stand-alone bills (AB 100 and SB 71) that were introduced in the Legislature which contain identical language from AB 75.

The Legislature may introduce legislation which would require a Connector-style mechanism for the Wisconsin small employer market called Badger Choice. This would be a mandatory purchasing pool where all small employers would purchase health insurance through a web portal maintained by the State. The plan would be a defined set of benefits created by the State closely resembling the State Employee Health Plan. Such plans would be subject to modified community rating and would prohibit the use of health status as a rating factor. All employers with a private health plan would be forced to switch to the BadgerChoice plan. The Governor originally planned to include this in the budget bill, but removed it due to strong opposition. Thus far, BadgerChoice legislation has not been introduced, but we are watching for it closely.