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★ **Health Reform: Dead or Alive? On a Back Burner or on Life Support?**

While many in Washington, DC, and across the nation assumed that congressional Democrats and the Obama administration would have made a clear decision on the best way to advance health reform forward by now, they have instead been all over the map with no agreement on strategy.

During his State of the Union address on Wednesday, the president did call on Congress to not give up on health care reform and asked them to reconsider the two bills currently on the table. But he also asked for anyone, on a bipartisan basis, who could come up with a better plan to bring their ideas to him, and stated that his current top legislative priority is a jobs bill.

Over the course of the week, congressional leaders have made all kinds of conflicting statements about health reform, ranging from pursuing a quick resolution through the use of the budget reconciliation process in the Senate to focusing on jobs immediately and taking the rest of the year to address the issue. Perhaps a clearer indication of at least the president's goals for moving forward will come next week when the administration is due to release its draft FY 2011 budget to Congress and public, as it will contain his health care spending blueprint for the upcoming year.

While their ultimate path remains unclear, if you listen closely to what the Democrats are saying, a few key themes are evident. First, it's clear that they haven't abandoned the idea of health reform entirely—it's not dead, it just may take them a while. Second, their focus is going to be on health insurance market reforms and not cost containment, helping the uninsured or other delivery system improvements.

In the Senate, Democratic aides are still investigating various procedural means of advancing H.R. 3590, including any way they could use the reconciliation process to pass fixes to the Senate bill with just a simple majority vote. But reconciliation is a complicated procedural maneuver and its use is not supported by several key Democratic senators. Also, because the rules governing its use limit it to matters with a direct federal budgetary impact, the process may not even be capable of satisfying the political problems many House members see with the Senate bill. Over the past few days, Senate leaders have indicated that it may take weeks or even months to decide what process will make the most sense for their chamber and that their current focus will be on jobs. Senator Reid even went so far as to say that the 111th Congress still has another year to act.

The clearest anyone has been on how they plan to forge ahead so far is House Speaker Nancy Pelosi (D-CA). Yesterday, she indicated that the House would move a series of market reform-oriented bills aimed at addressing the issues House members feel are most important. At the top of

**CALENDAR**

2/23	<a href="#">Capitol Conference Preparatory Webinar</a>
3/8 - 3/10	<a href="#">Capitol Conference 2010</a>
4/19 - 4/21	<a href="#">Benefits Selling Expo 2010</a>

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addressing the issues House members feel are most important. At the top of her list was eliminating the federal antitrust exemption for health insurers (see more detailed story below), and she identified other market-reform possibilities including medical loss ratios, pre-existing condition clauses, rescission protections and rating reforms as potential future bill topics. Pelosi said she was not giving up on passing a comprehensive bill, but she made it very clear that there are serious differences between the House- and Senate-passed legislation that will have to be addressed first and that there is really only about 70% agreement between the two bills.

With the focus now seemingly on insurance market reform, NAHU plans to be more vigilant than ever in advancing affordable, responsible reforms that will help contain costs and bring needed access to the private market. Many of the market-reform ideas promoted in both of the comprehensive measures, particularly in the House-passed bill, would be incredibly damaging to the private market, so we have our work cut out for us! As our [press release](#) following the State of the Union indicates, we have long advocated, and continue to advocate, members of Congress working together in a bipartisan fashion on sensible solutions that rein in health care costs, provide better access to care, improve quality, create better efficiency, and put our health care system on an affordable and sustainable path.

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#### **House Energy & Commerce Committee Addresses Transparency in the Health Care Reform Process**

Just hours before President Obama gave his State of the Union address to a joint session of Congress on Wednesday, the House Committee on Energy & Commerce came to a bipartisan agreement to obtain more information from the White House on some of the backroom deals that helped shape the health reform legislation passed by both houses of Congress last year.

The genesis for the committee's hearing was a vote requested by Republican committee member Representative Michael Burgess of Texas on a resolution regarding an inquiry that he had placed with the White House last September. Burgess has been seeking information about the deal the White House struck on cost containment with the pharmaceutical industry, as well as the meeting the White House held last May with the American Medical Association, the American Hospital Association, America's Health Insurance Plans, the Pharmaceutical Research and Manufacturers of America, AdvaMed and the Service Employees International Union that resulted in an industry-wide voluntary cost-containment pledge. Committee Chairman Henry Waxman (D-CA) said that Burgess's initial request was over-reaching the committee's oversight jurisdiction and could violate executive privilege, but agreed that he and the other committee Democrats believed there should be more transparency about these backroom deals with various trade groups.

Instead of passing a resolution, Waxman agreed to help Burgess obtain a comprehensive list of White House meetings with these trade groups and records documenting calls and e-mails exchanged between them and the Department of Health and Human Services about the matter. Had the committee not addressed the resolution or come to an agreement, Representative Burgess could have brought it up on the House floor for a vote. However, Waxman's decision to take the request seriously, hold the hearing just hours before the State of the Union and not defeat it, and then offer assistance in obtaining the information, shows a strong acknowledgment of the public's demand for greater government transparency in the health reform process.

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### **House May Take Up Insurer Antitrust Exemption Legislation Next Week**



One of the first ways House Democratic leaders may try to advance smaller pieces of health reform legislation through at least their chamber is by offering a bill to eliminate the federal antitrust exemption for health insurers as early as next week. A provision to eliminate the health insurer's antitrust exemption was included in H.R. 3962, the House-passed comprehensive reform bill. However, even though Senate Majority Leader Harry Reid also supports the repeal of the exemption, he was not able to include it in the Senate-passed bill, H.R. 3590, because it is opposed by Senator Ben Nelson (D-NE), a former state insurance commissioner.

Repealing the exemption has been touted as a means of eliminating the ability of health insurance carriers to fix prices—a concept popular with both House Democrats and the public. But, in reality, existing federal law under the McCarran-Ferguson Act provides only a limited antitrust exemption, has no impact on state antitrust laws, and does not in any way address health insurance market concentration or competition issues.

The exemption is actually used to allow insurers to share information in areas like fraud prevention, agent and broker licensing information, standardization of risk classification and policy forms, and joint underwriting ventures. All of these things benefit consumers by improving insurer efficiency and consumer protections, which mean that repealing the exemption will simply raise health insurance costs and restrict state regulators. As such, NAHU, the health insurance carrier community, the [National Association of Insurance Commissioners](#), and the [American Academy of Actuaries](#), among others, oppose the repeal of the exemption.

For more information on this issue, you can view NAHU's issue summary [here](#).

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### **New Mental Health Parity Regulations Released**



The Departments of Health and Human Services, Labor and the Treasury today jointly issued new rules providing parity for consumers enrolled in group health plans who need treatment for mental health or substance use disorders. They will be used to implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

MHPAEA greatly expands on an earlier law, the Mental Health Parity Act of 1996, which required parity only in aggregate lifetime and annual dollar limits between the categories of benefits and did not extend to substance use disorder benefits.

The new law requires that any group health plan that includes mental health and substance use disorder benefits along with standard medical and surgical coverage must treat them equally in terms of out-of-pocket costs, benefit limits and practices such as prior authorization and utilization review. These practices must be based on the same level of scientific evidence used by the insurer for medical and surgical benefits. For example, a plan may not apply separate deductibles for treatment related to mental health or substance use disorders and medical or surgical benefits. Plans

health or substance use disorders and medical or surgical benefits--they must be calculated as one limit. MHPAEA applies to employers with 50 or more workers whose group health plan chooses to offer mental health or substance use disorder benefits.

The new rules are effective for plan years beginning on or after July 1, 2010. Since the new regulations are what is known as an interim final rule, the three issuing agencies are seeking comments and could change the regulations based on comments received for 2011. NAHU is currently reviewing the interim final regulations and will submit comments if appropriate.

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### **Why We Need You at Capitol Conference 2010**



Contrary to what some are saying, health care reform is not yet dead! Even though voters in Massachusetts and public opinion around the country have told our elected officials to start over entirely and work in a true bipartisan fashion, Democrats in Congress and the White House are in overdrive looking for a way to resuscitate and ram through their very partisan legislation.

This is why we need our members at this year's Capitol Conference — to show strength in numbers that our industry stands for the right kind of health reform. Click [here](#) to register today!

If anything is clear at this point, it's that congressional leaders are in complete disarray as to how to move the ball forward. Democrats are trying to appease numerous factions within their highly diverse party, and it's likely that health reform discussions will continue for weeks to come, if not longer. As President Obama underscored in his State of the Union Address, jobs and the economy will take center stage on his domestic agenda for the near term.

But even in the unlikely event that Congress rams through some version of their bills in the next few weeks, there is still significant work to be done in the implementation and regulatory process, and our strong voices will be needed more than ever

Now is not the time to be complacent. We need many of our members to attend this all-important Capitol Conference to learn about the latest developments in health care reform, and to present to our elected officials a dedicated constituency that looks forward to continuing to make sensible health care reforms happen!

The schedule this year will feature a full day of training and information sharing on Monday, March 8, and speakers and Capitol Hill visits on Tuesday, March 9, and Wednesday, March 10. Just some of the planned speakers and sessions include:

- Health Reform and the 2010 Election Cycle with Stuart Rothenberg
- The Economic Impact of Health Reform, a discussion with Douglas Holtz-Eakin, president of DHE Consulting LLC and former director of the Congressional Budget Office, and Len Nichols, director of the Health Policy Program at the New America Foundation
- How Health Reform Could Impact The States—Views of a Governor and State Insurance Commissioners
- Public Opinion and Health Reform: A Media Perspective
- 2010 Health Policy Priorities in the House and Senate Presented by Key Members of Congress

## Key Members of Congress

- The Obama Administration's Expectations Going Forward

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