



Legislative Update

Robert M. Ferm

The Health Care Reform Debate Heats Up

The debate over health care reform overshadowed every other political issue throughout the spring and summer of 2009. It is fair to state that by mid-summer the political rhetoric for and against health care reform took on an ugly tone representative of politics at its worst. We were bombarded by media reports of fiery confrontations between supporters, opponents, and elected officials who were riding the fence. Interest groups on all sides had spent more than \$57 million on television advertising as of August 16, according to the *New York Times*. The political rhetoric over who pays for health care is crowding the more meaningful discussion of why the system costs so much and covers so few. Civil and informative debate has given way to identifying public enemy number one. Depending on your point of view, it is easy to demonize the health care insurance industry or those “tax-and-spend liberals” supporting an uncontrolled federal government. Proponents of change argue that scare mongering by opponents of change is nothing but a tactical strategy to bring down the Obama administration.

Reaching Across the Aisle

The *NBC Nightly News* reported on August 19 that on health care the president’s job rating had a 41 percent approval rating, with 47 percent disapproving. In an effort to address diminishing support for reform, the White House had seemed to indicate it was willing to jettison the so-called “public option” when Health and Human Services Secretary Kathleen Sebelius said it was not “the essential element” of the reform package, according to the Associated Press on August 16. Her suggestion that the White House could settle on insurance cooperatives as an acceptable alternative to a government-sponsored option was seen as an effort to reach across the aisle and address concerns of the fiscally conservative Blue Dog Democrats and moderate Republican lawmakers. We have yet to see detail on how cooperatives would be constructed or operate. In an effort to address progressive Democrats, the White House stated on August 19 that the administration had not changed its stance on the public option. *U.S. News Political Bulletin*, Aug. 21, 2009; see also www.usnews.com/usnews/politics/bulletin/.

Setting the rhetoric aside, the good news is that there appears to be a real effort from both political parties in an effort to find compromises on proposals left behind during the August recess. In the Senate, a group of senators are developing a bipartisan health reform bill. In the House, leaders are working through three separate versions of H.R. 3200, the “America’s Affordable Health Choices Act,” as approved by the House Energy and Commerce Committee, the House Ways and Means Committee, and the House Education and Labor Committee. Plans were for the collaborative version to be merged into a proposal that would be presented for floor vote when the Congress reconvened after Labor Day. Key points for continuing dialogue include the construct of overall insurance market reforms, coverage requirements, the nature and extent of subsidies, Medicaid reform, Medicare reform, legal malpractice reform, and equitable cost containment measures. See www.insurancejournal.com/news/national/2009/08/10/102872.htm.

Emerging Consensus on Fundamental Principles

In spite of the rhetoric for or against the current proposals, there does appear to be an emerging consensus on fundamental principles, although there is no guarantee they will be obtained before the end of the year.

On June 1, in a letter to President Obama, disparate constituencies, including the Advanced Medical Technology Association, America’s Health Insurance Plans, the American Hospital Association, the American Medical Association, the Pharmaceutical Research and Manufactures of America, and the Service Employees

International Union, identified core principles for meaningful reform. The principles include the following key areas: approaching appropriate utilization of care in order to lower costs; addressing innovative approaches to the cost of doing business; administrative simplification and consequential cost savings, and better management of chronic care, which accounts for 75 percent of overall health care spending. See ama-assn.org/amal/pub/upload/mm/31/stakeholders-to-obama.org.

Issues with Potential for Compromise

TIPS members are encouraged to review a paper released on July 6 titled “An Emerging Middle Ground? An Analysis of Health Reform Positions” by Michelle Herman and Cynthia Vasquez. The paper was funded by the Robert Wood Johnson Foundation and Avalere Health. The authors comment on the diversity of constituencies that appear willing to compromise to some extent to achieve health care reform. The potential for compromise exists on the following issues, according to the authors: providing premium assistance to low-income individuals and families to purchase health insurance; expanding access to, and coverage of, high-quality preventive services; promoting wellness and healthy patient behaviors; increasing primary care physician payments to address workforce shortages; restructuring provider payments to reward for high-quality care, not for volume of services provided; encouraging chronic care coordination among providers and across various points of care to treat patients holistically; accelerating health information technology adoption and use; and encouraging transparent dissemination of information about health care quality and costs. See www.rwjf.org/files/research/7609middlegroudavalere.pdf.

By the time this article is published, we will have a better idea as to whether or not health care reform will be a reality in 2009. Hopefully, the finger pointing, demonizing, and political rhetoric will have given way to an honest effort to address the core challenges in creating a health care system that is less expensive and less dysfunctional than the current system. The TIPS Governmental Affairs Committee will continue to monitor and report on developments. ❖

Robert M. Ferm is a member of Hall & Evans LLC in Denver, Colorado, and is chair of the TIPS Governmental Affairs Committee. He can be reached at fermr@hallevans.com.



Mark Your Calendar

TIPS Section Fall Meeting

October 6–11, 2009, San Diego, CA
(312-988-5672)

Preventing and Defending Insurance Bad Faith Claims

October 15, 2009
Teleconference 1:00PM–2:30PM EDT
(312-988-5597)

Aviation and Space Law Litigation Program

October 22–23, 2009, Washington, DC
(312-988-5708)

Fidelity and Surety Law Committee Fall CLE Program

October 28–30, 2009, Philadelphia, PA
(312-988-5708)

Premises Liability National Program

November 5–6, 2009, St. Pete Beach, FL
(312-988-5597)

The Psychology of Impasse in Negotiation and Mediation

November 18, 2009
Teleconference 1:00PM–2:30PM EST
(312-988-5597)

Midwinter Symposium on Insurance, Employment, and Benefits

January 14–17, 2010, Bonita Springs, FL
(312-988-5708)

Fidelity & Surety Law Committee Midwinter Meeting

January 26–30, 2010, San Francisco, CA
(312-988-5672)

ABA Midyear Meeting

February 3–9, 2010, Orlando, FL
(312-988-5672)

ABA 2010 Workers’ Compensation Midwinter Seminar and Conference

March 4–6, 2010, Phoenix, AZ
(312-988-5708)