Health Care Outlook for 2011 and Beyond

The Legal, Policy and Political Landscape

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Overview

- Overview of Political Landscape
- Health Care
  - Congress
    - Health Care Reform Revisited
    - Budget and the Debt Limit
  - Administration
  - States
  - Providers, Plans and Employers
  - Courts
  - Agenda Outlook
Federal Spending Growing

Federal Deficits Climbing

Divisive Environment in 2010

Listen, pal, the way I see it, you have two choices. Either you can be right, like me, or you can be an unwitting dupe of the left, like you!

Polarized bears
Public Debt Growing
Foreign Holdings of U.S. Debt

46%

Source: Data from The United States Treasury, Treasury International Capital System, *Major Holders of Treasury Securities*, June 30, 2010; Compiled by PQPF.
Federal Health Spending Growing

2035: 10% of GDP Total
- Medicare: 6% of GDP
- Medicaid, CHIP and Exchange Subsidies: 4% of GDP

2080: 17% of GDP Total
- Medicare: 11-12% of GDP
- Medicaid, CHIP and Exchange Subsidies: 5-6% of GDP
Entitlements Growing
Landscape

Congress

States

Private Market

Executive Branch

Courts
Congress

The forecasted focus for 2011:

- The Economy
- Deficit Reduction and the Budget
- Health Care Reform
Congress

*Actual Focus:*

- Deficit Reduction and the Budget
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For Health Care Reform

(1) House voted to repeal, but…
Then What...

- (2) Attempt to repeal pieces such as
  - 1099 reporting requirement (now repealed)
  - FSA limitations
  - CLASS Act
  - Insurance taxes and "medicine" taxes
  - Resolutions of Disapproval
    - As interim final rules become final rules and other final rules are issued, they are subject to the CRA
    - Grandfathered plans
But...

- Congressional Budget Office and budget realities (e.g. repeal scored as a $230B cost)
- Investments in implementation are being made
- And, a dilemma -
  - If efforts to repeal the most objectionable elements are successful...
  - Strategically, some will say this makes it harder for full repeal later.
So therefore, focus is on...

- (3) Targeted Efforts
  - Investigations
  - Subpoenas
  - Block or Limit funding for implementation
  - Hearings
Due to budget cuts, the light at the end of the tunnel has been turned off.
Interest on the Debt

- Interest payments on the federal debt will quadruple in the next decade.
- In 2014, interest payments will surpass federal spending for education, transportation, energy, and all other non-defense discretionary spending.
- In 2018, spending for interest on the debt will exceed Medicare spending.
The Debt Ceiling

- Has to be increased by late June
- Tea Party Conservatives insisting on budget reforms and spending reductions as a condition of raising the debt ceiling
- A series of small increases in the debt ceiling is possible
  - Down payments on deficit reduction will be necessary
  - Would buy more time for negotiations
Timeline for Budget Issues

- April: Pass Measure to Fund Government Through FY2011
- April-June: Congressional Budget Debate
- May-June: Debate to Raise Federal Debt Ceiling
- June-December: FY2012 Appropriations
  - Omnibus?
- December: Medicare and Medicaid Must-Pass Bill
The Debt Ceiling

Pushing the Limit
The federal debt ceiling, in trillions

Current ceiling: $12.1 trillion

Source: Office of Management and Budget
What to Watch

- House Budget Chairman Paul Ryan's proposals:
  - Block grant Medicaid for LTC
  - Change acute care Medicaid into an HSA-like model
  - Premium support model for Medicare

- Senate Bipartisan Group: Durbin, Conrad, Coburn, Crapo, Warner, Chambliss

- How will President Obama engage

- To what extent will this be a vehicle for changes to the ACA
What does this mean for health care reform implementation?

Implementation Outlook
The Administration

- Continued and feverish work on implementation
- Will keep working to mitigate problems with groups adversely affected (e.g. mini-med plan waivers)
- Expect more open door forums, RFIs on implementation issues
The States

- Exchange implementation
- Conforming state law and regulations (NAIC model law)
- Making decisions on approach - regulatory vs. free-market or hybrid
- Forge ahead with own reforms
- Medicaid reforms
Providers, Plans and Employers

- Plans determining whether to enter new markets
- Employers determining what to do with their health coverage
  - Defined benefit vs. defined contribution
- Providers adjusting for impact of reforms and testing new payment models through CMMI
Courts

- Will the Supreme Court find the individual mandate unconstitutional?
- What result from the lack of a severability clause?
- And if this happens, what happens after that?
Legal Analysis
Potential Scenarios

Supreme Court

- Strikes down individual mandate alone - no severability
  - The absence of the individual mandate would cause market disruption. Congressional intervention would be required

- Strikes down all coverage provisions
  - Private coverage and Medicaid expansion void

- Strikes down private coverage provisions
  - Medicaid expansion remains. Congress would have to agree to and pass new private coverage provisions

- Strikes down the entire ACA
  - Coverage, delivery system and financing provisions void

- Finds individual mandate constitutional
  - No change
Agenda Outlook

- General rule: Gridlock
- Budget negotiations - something has to happen to enable raising the debt ceiling
- Must-pass end-of-year bill
Questions
A Laundry List

Provisions that we’ll likely be hearing about.
Laundry List - Coverage

- Repeal individual mandate and substitute alternative risk spreading mechanisms
- Broaden the grandfather plan provisions - allow employers that offer coverage to continue to offer it without changes
- Loosen the standards for plans in the Exchange
- Expand HSAs - repeal limitations
- MLR repeal or changes
Laundry List - Taxes

- Repeal health care related tax increases:
- Three health insurance taxes:
  - to fund comparative effectiveness research (CER)
  - to fund reinsurance
  - to provide general revenues
- Excise tax on medical devices
- 1099 changes (repealed)
Laundry List - Medicare

- Delay cuts to Medicare Advantage - substitute fixed benchmarks to benchmarks set by competitive bidding
- IPAB repeal
- Reinstate full retiree drug subsidy
- Longer term doc fix?
Laundry List - State Flexibility

- Increased state flexibility generally
- Expanded state waiver process (Wyden)
- Domicile-based regulation of insurance to permit interstate sale
- Exchange reforms - eliminate regulatory powers, actuarial equivalence standard only for qualified health plan
2012

- How will voters view health reform in 2012?
- How will deficit reduction efforts impact election outlook?
- To be successful, GOP needs a viable, workable set of policies that could be enacted in place of the ACA