48 Amendments That Protect Health Insurers' Interests

On Thursday, Sen. Jay Rockefeller (D-WV) speculated that "if there's anything which is clear, it's that the insurance industry is not running this markup, but it is running certain people in this markup." Indeed, in the last two and a half years, the health insurance industry has spent $585,725,712 million lobbying Congress to protect its investments in Medicare advantage, defeat competition from a public option (or even a cooperative), and preserve policies that allow it to attract a disproportionate number of healthy applicants.

An analysis conducted by the Center for American Progress Action Fund of all 534 amendments has identified at least 48 amendments that directly reflect the industry's wish list. And while the information below does not demonstrate a direct quid-pro-quo between an insurers' contribution and a senator's amendment, it raises an important question: Why are some senators so intent on protecting an industry that is partly responsible for creating the current health care crisis?

MEDICARE ADVANTAGE

AHIP: We have strong concerns about the proposed funding cuts in Medicare Advantage. [AHIP Letter, 9/21/2009]

Kyl D1—Strike Title III. Title III includes the cuts in Medicare Advantage payments via new competitive bidding rules for Medicare Advantage plans.

Kyl-Crapo D6—The amendment would strike the MA payment cuts under subtitle C of Title III

Crapo-Kyl-Roberts D1—Amend the proposed Medicare Advantage cuts in the Title III, Subtitle D of the Chairman's Mark.

Roberts D9—Amend Title III to strike all provisions that reduce or have the effect of reducing financing for Medicare.

Grassley D1— To increase Medicare Advantage plan utilization of care coordination and management techniques and promote efficiency in plan bids. Under this bonus, plans would receive 10 percent of the difference between their bid and 85 percent of the average FFS amount. This amendment would increase the bonus to 25 percent of the difference between the plan's bid and 90 percent of the average FFS amount.

Grassley C5—This amendment would require that prior to implementing any of the changes in Title III, Subtitle C, the Secretary of Health and Human Services must certify that the proposed changes will not result in decreased access to Medicare Advantage plans in rural areas.

Cornyn D3—Amends the proposed changes to the Medicare Advantage program in Title III, Subtitle D of the Chairman's Mark. The amendment would prohibit the implementation of the competitive bidding changes to the Medicare Advantage program in any bidding area where the proposed changes would result in reduced benefits for seniors.

Cornyn D21—Amends the proposed changes to the Medicare Advantage program in Title III, Subtitle D of the Chairman's Mark. The amendment would prohibit the implementation of the competitive bidding changes to the Medicare Advantage program in any bidding area where the proposed changes would result in reduced benefits for low-income seniors.

Hatch D7—Strikes the Medicare Advantage provisions of the Chairman's mark if CBO certifies that beneficiaries currently participating in the Medicare Advantage program will lose plan benefits when the Medicare Part C reductions are implemented by the Centers of Medicare and Medicaid Services. CBO is required to make this certification 3 months after the enactment of the health reform bill.

Ensign D5—The Secretary of Health and Human Services shall not implement the provisions relating to Medicare Advantage in Title III, Subtitle C of the Chairman's Mark for any year unless the Secretary certifies for such year that none of the provisions of such part would result in any senior who would otherwise be enrolled in a Medicare Advantage plan from being forced away from or losing that senior's enrollment in such Medicare Advantage plan, as such enrollment was in effect as of the day before the date of enactment of this Act.

Hatch D6—Strike the Medicare Commission created on page 156 of the mark. The Medicare Commission would be charged with identifying additional savings in the Medicare program, which could include Medicare Advantage payments and other provider reimbursements.

Roberts D3—Strike Title III, Subtitle E, Medicare Commission

Cornyn D6—Strike the Medicare Commission in Title II, Subtitle D of the Chairman's Mark.

Bunning D3 This amendment deletes the provision in the Chairman's mark that requires the Medicare Commission's (or Secretary's) original proposal to go into effect automatically if Congress has not passed legislation based on the Commission's (or Secretary's) proposal by a certain date.

***

TAX ON HIGH-COST PLANS

AHIP: "Without system-wide cost containment provisions, the proposed new taxes on high cost plans and the proposed new taxes on key components of health expenditures would cause many Americans to spend more on coverage….We are concerned that these provisions will increase costs." [AHIP Letter, 9/21/2009]

Kyl F7—Eliminate excise tax on health insurance coverage. *Offset by reducing value of affordability subsidies.*

Hatch F4—Would provide that only employer-paid premium amounts would count for purposes of assessing the excise tax.

Hatch F8—The amendment would strike the provision on page 201 of the Chairman's Mark that disallows the excise tax as a deduction for federal income tax purposes.

Bunning F1—The amendment would sunset on December 31, 2019, any provision of the Chairman"s Mark that increases the federal tax liability of any taxpayer.

Roberts/Hatch F2—Excludes FSA, HRAs, HSAs, dental, vision plans from calculation of excise tax on high-cost insurance policies.

Ensign F6—Modifies indexing of high-cost insurance excise tax to CPI-Medical.

TAX ON INSURANCE PROVIDERS

AHIP: We believe it is crucial that the committee reconsider these provisions.

Grassley F1—This amendment would strike the fee on health insurance providers contained in the Chairman's Mark.

Kyl F1—Eliminate all industry fees. *Offset by reducing value of the affordability subsidy.*

Kyl F4—Eliminate health insurance providers' fee. *Offset by reducing value of affordability subsidies.*

Cornyn F3—Strike insurance industry fee.

Hatch F15—All industry fees would be deductible for U.S. income tax purposes.

Hatch F16—The amendment would provide that the annual fees would apply only to the extent that the taxable income of each company in the various industry segments affected exceeds an amount that is equal to ten times the amount of the annual fee that is otherwise assessed under the provisions.

Hatch F17—The amendment would provide that the annual fees would not take effect until the General Accountability Office certified that no portion of the annual fee in each industry segment is likely to be passed on from the company on which the annual fee is levied to any consumer of the products of any of such company.

Hatch F18—The amendment would provide that the annual fees on manufacturers and importers of medical devices, on health insurance providers, and on clinical laboratories would have the same specifications that the Chairman's Mark provides for the annual fee on manufacturers and importers of branded drugs (on page 214).

***

HEALTH CARE COOPERATIVES

AHIP: We have strong concerns about the proposal for new, untested government-created health insurance cooperatives. [AHIP Letter, 9/21/2009]

Kyl C1—Eliminate the Consumer Operated and Oriented Plan (CO-OP) Program.

Hatch C7—Strikes the Federal Government-funded Health Care Cooperative under Title I, Subtitle E and direct savings to reduce the deficit.

Cornyn C19—If the Government Accountability Office finds that adequate competition exists in a state, no CO-OP funding shall be made available in that state.

Kyl C2—Eliminate Federal Funding of the Consumer Operated and Oriented Plan (CO-OP) Program. The amendment would strike the authorization of $6 billion in funding for the Consumer Operated and Oriented Plan (CO-OP) program under Subtitle E of Title I.

Cornyn C15—Prohibits the CO-Ops from using federal funds to lobby Congress, and if the CO-OPs lobby Congress then federal funding shall be eliminated for such CO-OP.

Cornyn Amendment C16—No federal funds may be used by the CO-OPs for marketing.

Cornyn Amendment C18—This amendment amends Title I, Subtitle E of the Chairman's Mark regarding health care cooperatives (CO-OPs). Before the CO-OPs can operate or receive federal funding, the state must have implemented all the insurance reforms required by America's Healthy Future Act.

Grassley C2—Prohibits the Secretary from interfering with the negotiations between a co-op or co-ops and drug manufacturer, pharmacy, hospital or any other health care provider; the Secretary may not require or institute a price structure for the reimbursement of any health care service covered by the co-op or co-ops. This amendment clarifies that nothing in this section or in this part shall be construed as authorizing the Secretary to authorize or institute a price structure for benefits, or to otherwise interfere with the competitive nature of providing health insurance benefits through a health care cooperative.

Hatch C9—To ensure a level-playing field for fair competition the government-funded health care cooperatives under Title I, Subtitle E must meet all the requirements imposed on other private insurance providers by the respective states in which the cooperative is located. This would include solvency and licensure requirements, rules on payments to providers, compliance with network adequacy rules, compliance with rate and form filing rules and any applicable State premium assessments.

***

LOWERING BENEFIT STANDARDS

AHIP: We are concerned that the new national benefit standards – taking into account both the actuarial value requirements and provisions that provide unlimited access to any and all services – would impose higher costs. [AHIP Letter, 9/21/2009]

Enzi C1—The amendment lowers the actuarial value of the bronze plan to 60 percent and maintains the out-of-pocket limit specified in the Chairman's mark.

Kyl C11—Prohibits the federal government from limiting consumer choice by setting actuarial values of health insurance plans.

Cornyn Amendment C10—Gives states the authority to allow individual and small group health insurance plans that do not meet the actuarial standards described in Subtitle C, if the state determines this would result in more affordable coverage options for their residents.

Kyl C10—Prohibits the federal government from defining the health care benefits offered through private insurance.

***

FLEXIBLE SPENDING ACCOUNTS

AHIP: The proposed limit on contributions to flexible spending arrangements would be problematic. [AHIP Letter, 9/21/2009]

Kyl F6 —Eliminate flexible spending arrangement cap. *Offset by reducing value of affordability subsidies.*

Ensign F1—Removes cap on flexible spending arrangements.

Cornyn/Roberts F4 —Strikes the $2000 cap on FSAs.

Snowe F3—The Chairman's mark includes a cap on Flexible Spending Accounts (FSAs) at $2,000 starting in 2013. The amendment would implement a higher cap and index that amount to inflation.

Roberts F3—Increases cap on FSAs to $5,000, indexes the cap to inflation.

Enzi F1—Increases cap on FSAs, indexes cap to CPI and creates a cash-out provision for FSA contributions. *Offset by reducing value of affordability subsidies.*

Roberts/Hatch F1—Eliminates annual use-it-or-lose-it requirement for FSAs.