

MEMORANDUM
April 6, 2010

TO: State Executives
Board of Directors
Executive Committee
Government Affairs Committee
Health Care Task Force
Agents & Broker Roundtable
State Presidents/Chairs
State Lobbyists

FR: Charles Symington, Senior Vice President of Government Affairs
John Prible, Vice President, Federal Government Affairs
Lauren Cialone, Senior Director, Federal Government Affairs
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RE: Health Care Reform Legislative Memo

On Tuesday, March 30, 2010, President Obama signed into law the *Health Care and Education Affordability Reconciliation Act of 2010*, a companion package of “fixes” to the comprehensive *Patient Protection and Affordable Care Act* that was enacted the prior week. Taken together, the two measures make the most profound changes to our country’s private-market health care system since the Great Society of the 1960’s. The legislation was the result of more than a year of activity, and the Big “T” was at the forefront of these deliberations at every stage throughout the process.

Legislative History of the Reform Effort

The current health care reform legislation can be traced back to the 2008 Presidential campaign, when both of the major party presidential candidates made health care reform a top campaign issue.

On November 12, 2008, immediately after President Obama’s election, Senate Finance Committee Chairman Max Baucus (D-MT) released a white paper detailing his principles for health reform. This provided a framework for Congressional consideration of the issue in 2009. Several bills were introduced when the 111th Congress first convened, and these bills covered a broad spectrum of approaches to health reform. Unlike previous efforts at health care reform, notably President Clinton’s initiative in 1994, the Administration did not release a detailed legislative proposal for reform but instead let both chambers of Congress develop their own legislative proposals.

House

H.R. 3200, America’s Affordable Health Choices Act of 2009, was originally introduced on July 14, 2009, and was considered by three House committees with jurisdiction over health care—Education and Labor, Energy and Commerce, and Ways and Means.

The bill was passed out of the Ways and Means Committee on July 16th by a vote of 23-18. Three Democrats joined all Republicans in opposing the bill. The bill was passed out of the Education and Labor Committee on July 17th by a vote of 26-22. Three Democrats joined all Republicans in opposing

the bill. Finally, after a two week delay because of objections raised by Blue Dogs, the bill was passed out of Energy and Commerce Committee on July 31st by a vote of 31-28. Five Democrats joined all Republicans in opposing the bill. There were significant changes to the legislation (numerous that were important to the Big “T”) as a result of the objections raised by the Blue Dogs in the Energy and Commerce Committee.

On October 14, 2009, House Democratic Leadership consolidated the three pieces of legislation reported by the Committees of jurisdiction and reported out H.R. 3962, the Affordable Health Care for America Act. On November 7, 2009, the House passed H.R. 3962 largely along party lines (220 yeas – 215 nays), with one Republican voting yes.

Senate

Much like in the House, there were several committees with jurisdiction over health care reform in the Senate. On July 15, 2009, the Committee on Health, Education, Labor, and Pensions, passed S. 1679, the Affordable Health Choices Act, by voice vote and along party lines. Longtime Committee Chairman Ted Kennedy (D-MA) was ill at the time and Sen. Tom Harkin (D-IA) was the acting Chairman with Sen. Chris Dodd (D-CT) serving as the lead negotiator.

The Senate Finance Committee, meanwhile, passed S. 1796, America’s Healthy Future Act of 2009, on October 19, 2009. Its passage was also via voice vote and along strict party lines, although Chairman Max Baucus (D-MT) and President Obama attempted to peel off support from moderate committee member Sen. Olympia Snowe (R-ME). They were ultimately unsuccessful.

The full U.S. Senate passed its version of health insurance reform on the evening of December 24, 2009 by a vote of 60 - 39. The Patient Protection and Affordable Care Act was a result of the consolidation of the two bills passed by the committees of jurisdiction.

2010 Developments

After the Senate passed its version of health care reform on Christmas Eve, it seemed that it was only a matter of time before the House and Senate came to agreement on legislative language and sent the reform to the President’s desk for signature.

However, on January 19, 2010, health care reform encountered a major political roadblock when Sen. Scott Brown (R-MA) was elected to fill the term of the late Sen. Ted Kennedy (D-MA). This electoral surprise, in what was considered a safe Democratic seat, caused consternation amongst many moderate Democrats in both chambers of Congress. This coincided with polling results showing that a solid majority of the country was against the existing health care reform proposals. More critically, it deprived Democrats of their “filibuster-proof” 60th vote. As a result, Democrats could not simply work out a compromise between the House and Senate and then respectively vote out a legislative deal. Republicans were now able to filibuster any additional votes coming before the Senate under regular order.

Democrats were left with only a few options, including: the House simply passing the Senate bill, the House and Senate restarting negotiations with Republicans in hopes of passing a scaled back bipartisan bill, the House and Senate passing “piecemeal” health care bills of importance, and the House passing the Senate bill and then both the House and Senate passing a separate “Reconciliation Bill” to make tweaks to the passed legislation. The reconciliation procedure is a special parliamentary tactic meant to be used solely for budgetary matters and is not subject to a filibuster, therefore it only needs 50 votes (plus the Vice President’s vote for a tiebreaker) in order to pass.

In an effort to move the process forward, the President released an initial health reform proposal on February 22, 2010. The plan was an attempt to merge the separate versions of health care reform passed last year by the House and Senate into one unified White House-preferred package. This proposal served as the starting point for negotiations at a summit the President convened on February 25, 2010 at the Blair House with Democrat and Republican Members of Congress. There were several issues that Republicans and Democrats ostensibly agreed on, such as: preventing waste and fraud in Medicare and Medicaid; addressing medical malpractice reform; reforming the insurance market; giving individuals more choices in coverage, and giving small businesses the opportunity to pool coverage for their employees. However, the nearly universal consensus following the Blair House Summit was that it was little more than political theater. More importantly, it was also clear that the President and Democratic Leadership had decided on their preferred legislative strategy – House passage of the Senate bill and then reconciliation.

Reconciliation

In early March, 2010, the President and Speaker Pelosi each whipped the Members of the U.S. House whose vote they needed to secure for passage of the Senate-passed health care reform legislation. Because of retirements, the Speaker needed to secure 216 yes votes in order to pass the legislation and send it to the President for his signature. Early reports indicated that there were 200 definite “yes” votes. One block of 12 “no” Democrats was due to language in the Senate bill on abortion funding they found objectionable. To assuage these Members, President Obama agreed to issue an Executive Order prohibiting federal funds from being used on abortion procedures. This, combined with other whipping efforts, assured House passage of the legislation.

On March 21, 2010, the House passed the Senate legislation by a vote of 219 – 212 with numerous Blue Dog Democrats voting against the bill and not one Republican voting for it.

On March 23, 2010, President Obama signed H.R. 3590, the “Patient Protection and Affordable Care Act” into law.

Also on March 21, 2010, the House passed the “Reconciliation Bill” (H.R. 4872) that made a number of previously-agreed upon changes to the Senate text, as negotiated by President Obama and House/Senate Democratic Leadership. The Reconciliation Bill passed by a vote of 220 – 211.

The Reconciliation Bill was then sent to the U.S. Senate, where it was debated for two days. Republican Senators were able to win two points of order against the legislation, and small provisions (both related to an attached student loan bill) were therefore struck from the bill. On March 25, 2010, the U.S. Senate passed the Reconciliation Bill by a vote of 56 – 43.

Because of the points of order found against the legislation and the subsequent changes, the House had to pass the legislation yet one additional time, and they did so on March 25, 2010 by a vote of 220 – 207.

The Reconciliation Bill was signed into law by President Obama on March 30, 2010.

IIABA Involvement and Legislative Victories

To create a footprint in the debate, IIABA implemented a multifaceted government affairs campaign in 2009 and 2010 to make sure the voice of independent insurance agents and brokers was heard by lawmakers. The IIABA Executive Committee in early 2009 formed a special IIABA Health Insurance Task Force to work with the Government Affairs Committee to help guide the government affairs staff.

IIABA's advocacy efforts were put to the test in the spring of 2009 when one of the President's top health care advisors referred to the role of insurance agents and brokers as an administrative cost that can simply be eliminated in order to lower health insurance costs. To counter the Administration's misguided efforts; IIABA joined forces with the other major insurance producer groups and formed the Health Insurance Agent and Broker Alliance. This coalition launched an aggressive grassroots campaign that was capped off by a special summer health care reform fly-in where over a thousand insurance agents and brokers from 49 states participated in 400-plus meetings on Capitol Hill in July. IIABA also launched grassroots on health care reform issues eight separate times in 2009 and 2010.

In a testament to the grassroots power of independent agents and brokers and the resources that the IIABA government affairs office devoted to the issue of health care reform, the following major legislative victories were achieved by the Big "I" and our coalition partners.

Role of Agent and Broker

During the early part of 2009, some in Congress supported the Administration's assertion that the role of insurance agents and brokers was an unnecessary administrative cost. IIABA countered those fictitious claims by spending the better part of 2009 educating Congress and the Administration on the valued role of independent insurance agents and brokers. IIABA's message resonated with lawmakers from across the political spectrum. Through amendments aggressively lobbied by IIABA, both the House and Senate bills included specific language stating that agents and brokers will be able to sell health insurance both inside and outside of any newly created health insurance exchanges. This language is included in the final health care reform law.

State Based Exchanges

As mentioned, the final law creates health insurance "Exchanges" that would serve as catalysts for individuals and small businesses (up to 100 employees) to claim subsidies and purchase health insurance. The House version of the legislation would have created a single national Exchange that would have been regulated and administered by the Department of Health and Human Services (HHS). The Senate version, meanwhile, proposed state-based Exchanges that were created and regulated by individual states. Though the Big "I" was concerned about the general concept of exchanges, we strongly opposed the creation of a single national Exchange and instead made the argument that if any new Exchanges were created they should be state-based. The issue of state-based Exchanges vs. a single national Exchange was a major point of contention between the House and Senate, and in a major win for independent insurance agents, the final law provides that these Exchanges be state-based. Thus, it will be up to the individual states to implement and regulate the Exchanges.

Commission Oversight

The House version of the legislation would have provided the HHS with the authority to regulate insurance agent commissions inside of the national Exchange. The Senate version of the legislation would have left the regulation of commissions up to individual states as they regulate state based exchanges. The Big "I" strongly opposed granting HHS authority to regulate commissions. In another victory for independent insurance agents, the final law does not grant HHS the authority to regulate commissions and instead leaves that authority at the state level.

Health Insurance Rating Authority

President Obama, in his February 22nd proposal, suggested creating a federal Health Insurance Rating Authority with the authority to review and approve (or disapprove) all health insurance rate increases by private carriers. Such an idea was embraced by many of the more liberal Members of Congress. The Big "I" strongly opposed the creation of such a federal rate authority and instead argued that any rate review

should be conducted at the state level. The final law does not create such a Health Insurance Rating Authority but instead directs the states to conduct their own rate reviews, though it does allow Exchanges to bar private plans from participation if states determine they have excessive rate increases.

Government-Run Health Insurance Plan

For most of last year, the biggest debate in Washington and around the country was over the creation of a government-run health insurance plan that would unfairly compete with private insurers in the newly created health insurance exchanges. The House bill included a government-run health insurance plan, but the Senate bill did not.

IIABA opposed the government-run plan from the start and lobbied aggressively against its inclusion in the health care reform bills. A government-run plan would create an inherently unlevel playing field that would drive private insurers out of the market over time and dismantle the employer-based health care system. As history has proven, the federal government sets its own rules and there is nothing fair or level about them. In a MAJOR win for independent insurance agents, the final health care reform law does not include a government-run health insurance plan.

Government Enrollment Programs

IIABA was also strongly opposed to establishing government enrollment programs that would foolishly displace independent insurance agents and brokers and hand that trusted role over to non-profit groups with no relevant health care background or training. IIABA believes individual consumers and businesses seeking information on what health insurance plan best fits their needs should be able to count on sound advice from a licensed health insurance agent, broker or consultant. Both the House and Senate legislation contained a provision creating “Navigators” who could be nonprofits, unions, or community groups that would receive government grants to educate and enroll new health insurance consumers. IIABA fought against the creation of these “Navigators” and, via amendments, we were ultimately successful in ensuring that agents could themselves be eligible to be “Navigators.” More importantly, new language was added requiring any “Navigators” to be appropriately state licensed in order to conduct enrollment. This language was included in the final law.

Repeal of McCarran Ferguson for Health and Medical Malpractice Insurers

IIABA was also opposed to lifting the anti-trust exemption for health and particularly medical malpractice insurance, which is a property-casualty product. The repeal of anti-trust for health and medical malpractice insurance was included in the House-passed legislation but was not included in the Senate version. The IIABA opposed this provision strenuously and lobbied aggressively against it. The final health care reform law does not include any repeal of McCarran Ferguson for any sector of insurance.

The Future of Health Care Reform

Health care reform now moves from a legislative to a regulatory phase as the Department of Health and Human Services (HHS) and individual states begin implementing the new law. During this phase, IIABA will work with our state associations to ensure our general membership is prepared for the changes that are coming. IIABA has already prepared an implementation timeline that has been distributed. Though many of the provisions will not take effect for a number of years, several issues will be implemented in the next few months. These include:

- The development of the national high-risk pool program for individual market consumers with preexisting conditions, which will become effective in 90 days.

- The development of the temporary reinsurance program for employers that provide retiree health coverage for employees over age 55, which is also scheduled to begin within 90 days.
- The rollout of the new market reforms and coverage provisions that will apply to all plans within six months, including grandfathered plans. These provisions include the increase in the dependent age to 26, the new preventive care provisions and other mandates, the policy rescission provisions and the restrictions on annual and lifetime benefit limits.
- The small employer health insurance premium tax credit program, which is retroactive and will apply to premiums paid in taxable years beginning after December 31, 2009.
- The development of the relevant definitions that will govern the medical loss ratio requirements for health insurance carriers by the National Association of Insurance Commissioners. This process must be completed by December 31, 2010.
- The development of the new grant program for small employers that offer wellness programs, which is slated to begin in October 2010.

Though there will be many challenges associated with the new law, IIABA and our coalition partners worked diligently to protect the private delivery of health care and the agent role in the process. As a result, tangible improvements were made to the law throughout the legislative process.