

Daschle Tapped for HHS Secretary Position

President-elect Obama has tapped former Senate Majority Leader Tom Daschle (D-SD) to serve as his Secretary of Health and Human Services (HHS). In addition, Daschle will be the White House health care “czar,” helping to develop and execute the president's reform agenda. Health care advocates and policymakers applauded Daschle's selection as secretary saying it signals Obama's commitment to comprehensive health care reform.

Daschle served in Congress from 1978 to 2004, with his Senate tenure beginning in 1986. He was a leading advocate for comprehensive health reform when Congress was debating the issue in 1993-94. Daschle is now an adviser to the law firm of Alston & Bird. He also is a Distinguished Fellow at the Center for American Progress and author of the 2008 book, *Critical: What We Can Do About the Health-Care Crisis*.

Senators Max Baucus (D-MT) and Chuck Grassley (R-IA), Chairman and Ranking Member of the Senate Finance Committee, respectively, applauded the selection. “Senator Daschle knows clearly the Congress; specifically, he knows the Senate. He knows the rhythms of this outfit and the players, and he's an excellent choice for HHS secretary,” Baucus said. Grassley told reporters it was “a big step forward” from the Bush administration to have Cabinet members who understand Congress.

Earlier this year, Daschle gave the opening address at the Families USA Health Action Conference. Families USA

is a national nonprofit, nonpartisan organization dedicated to the achievement of high-quality, affordable health care for all Americans. Here is an excerpt from that speech that delineates Daschle's thoughts regarding health care reform.

“One of the biggest tactical mistakes we've made is to allow the opponents of health reform to define the debate. As a result, we've lived under a number of myths. Perhaps the biggest myth of all is that the U.S. has the best health system in the world. So before the debate can begin, we need to all understand the same basic facts. We need to understand how we got here and where we need to go.”

“Incremental change in our system is no longer a viable option. Instead we need comprehensive reform. In growing numbers the American people are demanding that we do something. Our goal should be to build what current and retired members of Congress have today, and make that available for all Americans.”

Elements of Daschle's health care reform platform include:

- Establishing an autonomous oversight body for health care comparable to the Federal Reserve for our monetary sector. This group would have the responsibility to control costs, starting with chronic disease, which represents the largest block of costs to the system.
- Investing in information technology that would result in quantum leaps in efficiencies and quality improvements.
- Pooling to aggregate the risks/costs for small business and individuals.
- Negotiating drug pricing – build on and leverage the purchasing volumes that government already has.
- Initiating prevention measures – wellness, easy access, and early intervention. (Cont'd page 4)

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Baucus and Kennedy Work Separately on Health Care Reform

Decades of work on health policy issues and his passion for covering the uninsured may make Senator Edward Kennedy (D-MA), Chair of the Health, Education, Labor and Pensions (HELP) Committee, the natural leader when it comes to health care overhaul. Kennedy and his staff have been emphasizing that they plan to use the health plan of President-elect Barack Obama as a blueprint for a comprehensive health care reform plan, and they are working closely with the President-elect's team. But, in a press briefing on November 12, Senate Finance Committee Chair Max Baucus (D-MT) made it abundantly clear that he intends to be at the center of the action too.

The previous week, on November 7, just three days after the election, Baucus announced plans to unveil the following week his own "specific goals and policy options for comprehensive health care reform in 2009" – without waiting for Obama's detailed proposals. In a letter to Obama dated November 6, Baucus said, "Next week I will present to you and to the country my plan to move forward on health care reform in the early days of the 111th Congress and of your administration." He also said, "I made sure the Finance Committee spent this year learning and preparing for action on a comprehensive overhaul of the health care system, and I intend for us to move swiftly and decisively with legislation in early 2009." Baucus added that he would "work together with the new administration and with my colleagues in Congress in refining and advancing this effort." But he left no doubt that he intends to have the first say on the matter.

Indeed, in addressing his packed press briefing on November 12, Baucus distinguished himself by releasing a lengthy white paper, entitled *Call to Action, Health Reform 2009*, outlining his overhaul plan (<http://finance.senate.gov/healthreform2009/home.html>). In the paper, Baucus calls for creation of a nationwide insurance pool called the Health Insurance Exchange, and for expanding three government health programs – Medicare, Medicaid, and the State Children's Health Insurance Program (SCHIP) – as well as opening Medicare to people ages 55 to 64. He also outlines new tax breaks for individuals and small businesses to offset the costs of insurance. As for funding sources, he argues that ideas such as eliminating waste and fraud, focusing on prevention, and using sophisticated data to identify the most cost-effective therapies will save money over the long term. In the short term, he advocates eliminating what Democrats have long criticized as "overpayments" to insurance companies that sell managed care plans to Medicare recipients.

Possibly the most controversial idea in Baucus's plan is his suggestion to revisit the current tax treatment of employer-sponsored health insurance. Referring to GOP proposals eliminating the tax exclusion for employer-based health insurance premiums and converting the benefit to a tax deduction or credit, Baucus said that approach goes too far. Instead, he would encourage Congress to consider a middle road with some limited modification of the relevant tax code.

Meanwhile, Kennedy – although praising the Baucus plan – will likely present appealing arguments for his own set of overhaul plans. Furthermore, his efforts are expected to carry enormous weight, given his lifelong focus on the issue, his early endorsement of Obama, and his own health status battling brain cancer. Over the past several months, he has directed aides to convene negotiating sessions with a diverse group of stakeholders, including physicians, patient advocates, small-business owners, and insurers. Through an aide, Kennedy said, "We're doing all we can to unite Congress around a single, unified bill for early action next year." And, while his aides have refused to indicate what specific direction Kennedy will pursue, they have made it clear he does not intend to cede his long-time leadership role on health policy. He intends to have legislation drafted by Inauguration Day.

At the moment, however, the Baucus plan is getting plenty of attention. A number of lobbies, including America's Health Insurance Plans, the Advanced Medical Technology Association, and the American Medical Association have commended Baucus for offering his proposal without getting into specifics. Senator Ron Wyden (D-OR) who, with Senator Robert Bennett (R-UT), introduced S. 334, the *Healthy Americans Act*, also (Cont'd page 4)

MedPAC to Recommend Broad Disclosure of Financial Ties to Doctors

In its March 2009 report to Congress, the Medicare Payment Advisory Commission (MedPAC) will recommend that drug and medical device makers as well as hospitals are required to publicly report details about their financial relationships with doctors and other health care providers and groups. The commissioners approved on November 6 a package of five such disclosure and reporting recommendations that are intended to discourage inappropriate deals among health care institutions, companies, and practitioners. Another intent is for researchers to use the publicly reported information to study how financial ties among health care providers affect practice patterns.

While state disclosure laws have centered on drug company payments in the form of cash, food, and gifts to doctors, MedPAC's recommendations go far beyond that. The first of the five recommendations the panel adopted calls for broad disclosure of payments that drug and device manufacturers make to doctors, pharmacists, health plans, organizations that sponsor continuing medical education, hospitals and medical schools, patient organizations, and professional organizations. The second recommendation urges Congress to direct the Department of Health and Human Services (HHS) Secretary to report that information on a public Web site searchable by manufacturer, doctor name, type of payment, and other factors.

The third recommendation addresses the free drug samples drug companies widely distribute to doctors, a tactic critics say leads to unjustified prescribing of costly brand-name drugs. It urges Congress to require drug manufacturers and distributors to report to the HHS Secretary specific information about free drug

samples given to physicians and physician groups. MedPAC did not recommend that a value on the free samples be reported or that the data be reported publicly, but it did recommend that the data be made available to researchers to study the impact of samples on prescribing decisions.

The last two recommendations deal with financial relationships between hospitals and doctors, and concerns that giving doctors an ownership stake in hospitals can lead to inappropriate referrals to the facility. Recommendation four calls on Congress to require hospitals and their entities that bill the Medicare program to annually report specific data on physician ownership in their businesses, except where the businesses are publicly traded organizations, and to post the data on a public Web site. In follow-up, the fifth recommendation urges Congress to require that HHS submit a report on "the types and prevalence of the financial relationships between hospitals and physicians."

MedPAC Chair Glenn Hackbarth said the recommendations were aimed at transparency, not condemnation, of financial arrangements in the health care industry. He added that, if all financial links were inappropriate, MedPAC would urge their elimination.

While MedPAC's recommendations and possible design features for a public disclosure law have manufacturers reporting on a host of financial relationships ranging from consultant payments to medical education grants, rebates and discounts given to health plans and pharmacy benefit managers were considered proprietary data not to be included for competitive reasons. MedPAC Commissioner Thomas Dean disagreed and called the omission "unfortunate." Also, a number of commissioners emphasized that financial ties between doctors and drug and device companies can improve health care by promoting product development, for example, and that these beneficial links should not be discouraged by a disclosure law.

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Shorts . . .

Senate HELP Committee Agenda

A top priority of the Senate Health, Education, Labor and Pensions (HELP) Committee in 2009 will be health care reform – a long-held goal of Chair Edward M. Kennedy (D-MA). Although Kennedy's participation in committee activities remains an unknown (he had surgery for brain cancer in June and only recently returned to Washington), aides insist he plans to return to the Senate full time in January.

Kennedy's bill will address the plight of some 47 million Americans without health insurance – a major priority of President-elect Obama's campaign – so the new Administration's support is expected. The bill is also likely to include provisions affecting Medicare, Medicaid, and aspects of the private health market, such as health information technology and physician pay. Other committees sharing jurisdiction with the HELP Committee will include the Senate Finance, and the House Energy and Commerce, and Ways and Means committees.

Guide on Legal Aspects of Pandemic Planning

The American Health Lawyers Association (AHLA) has published a checklist of legal issues for healthcare providers involved in pandemic flu preparedness planning. This most recent addition to AHLA's Public Information Series, entitled *Community Pan-Flu Preparedness: A Checklist of Key Legal Issues for Healthcare Providers*, was the result of a May 2, 2008 public interest dialogue session convened by AHLA with the HHS Office of Inspector General and the Centers for Disease Control and Prevention. A select group of 52 participants from diverse areas of expertise shared their thinking on legal impediments and implementation challenges to community pandemic flu preparedness and practical solutions to such challenges. Their recommendations were incorporated into the checklist. Free copies of the 93-page checklist are available from AHLA. To download the PDF, go to www.healthlawyers.org/panfluchecklist. To request a print copy, send an e-mail to djin@healthlawyers.org.

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commended the Baucus proposal, noting that it had many of the elements found in his bill with respect to ending the tax exclusion. Wyden realizes that he may be outdone by Kennedy and Baucus, but said his ability to draw as cosponsors of S. 334 six Democrats, 10 Republicans, and one Independent illustrates the salience of the health care reform issue and that it is possible to move in a bipartisan way.

While the HELP Committee will share jurisdiction with the Finance Committee over portions of a health care overhaul, Baucus will have jurisdiction over a large part of any health care reform measure Congress tackles next year. Among other areas, the Finance Committee controls policy for Medicare, Medicaid, SCHIP, taxes, and Social Security.

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- Creating a Comparative Effectiveness Institute. As the Congressional Budget Office and Institute of Medicine have noted, an autonomous national institute that could use large data sets to identify the approaches that work best would clarify and unify clinical practice throughout America, and would have significant impact on both quality and cost.
- Maintaining transparency; cannot fix our problems until we can see them more clearly.
- Addressing medical malpractice; make it easier for physicians to make the best decisions, and protect them from frivolous legal actions.
- Improving patient-provider interactions by taking advantage of technology to smooth the flow of communications between patients and the health system.
- Creating universal coverage by increasing access through health vouchers and coverage.