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Welcome to the HSA Update, keeping you up-to-date on the Health Savings Account marketplace with bi-weekly analysis and review of public policy, market innovations, and technology advances in the HSA arena.

Contents:

[Brown Wins in MA: What is Next?](#)

■ **Brown Wins in MA: What is Next?**

The Democrats spent nearly a year discussing, writing, holding hearings, negotiation, and voting in order to pass health care reform. It took less than an hour after polls closed in Massachusetts' special Senate race for it to become clear that those efforts were not enough.

Republican Scott Brown's stunning victory over Democrat Martha Coakley deprives the Democrats of the 60 votes they need to pass House-altered health care legislation through the Senate. So what now? What options are available?

The timeframe for swearing in a newly elected Senator is typically five to seven days (up to 18 days); meaning Brown could be the 41st Republican Senator by the end of this month. However, that also means Democrats have the time to ram through health care legislation before Brown is seated. But that politically-dangerous option faded last night when Senator Jim Webb (VA), a moderate Democrat, stated that he believes the Massachusetts vote was a referendum on health care and that there should be no further votes on health care until Brown is seated.

Congressional leadership still has several options on how to proceed. They could ask the House liberals to hold their nose and vote for the Senate bill without changes, they could attempt a two-step reconciliation process on the current bill, scrape the current bill and try to pass a scaled-back reconciliation bill, or they could scrap the current bill and start over with a more targeted bill that includes only the most popular measures that could gain bipartisan support.

Asking the House to pass the Senate bill as-is has several drawbacks. House Democrats may not be able to garner the 218 needed votes to pass the Senate bill. Both liberal and conservative House Democrats object to provisions in the bill. Liberals believe that the amount of subsidies offered to low-income families to help them purchase insurance need to be increased in the Senate bill. Conservative Democrats, such as Stupak (MI), object to the lack of restrictions on abortion funding. This option would also mean that the hard fought negotiations with unions regarding "Cadillac" plans would be eliminated. Late last night, Speaker of the House Pelosi (D-CA) told reporters that "there are certain things in the Senate bill that must be changed," effectively killing this option.

Alternatively, the House could pass the current Senate bill and then attempt to modify it through the reconciliation process. This would be a two step process in which the first step is for the House to pass the Senate bill without changes and then pass a second "fixer" bill through the Senate. The "fixer" bill would be passed under reconciliation and therefore require only 51 votes

to pass in the Senate. However, under Congressional rules the reconciliation process is reserved for provisions that impact the federal budget. It is not clear if the Democrats could use this process under that rule. They are currently studying this option to see if it is viable. An additional hurdle to this two-step process is that several House Democrats, such as Stephen Lynch (MA) and Brad Ellsworth (IN), have all ready publically stated they do not support this option.

Another option being considered is for the current bill to be scraped and the Senate to start over with a much more limited reconciliation bill. This bill would be more limited in scope than the current version. It would require only 51 votes in the Senate. However, a health care bill will likely require new revenue sources and under the Constitution, only the House can initiate tax measures.

At this time, the most politically-viable option is for the Democrats to start over on an entirely new bill. This bill would contain only the most popular provisions from the current bill, most centered on insurance reforms. With this option, they would likely be able to gain bipartisan support and fulfill the need to “get something passed,” while also appeasing Democrats concerned that the health care debate will cost them their seats in this year’s elections.

At this time the only certainty is that the health care debate will continue.

[Return to top.](#)

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