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An Update on Federal Health Care Reform with Attorneys from Crowell & Moring LLP

[Crowell & Moring LLP](#) is a Washington, D.C.-based international law firm with more than 450 lawyers practicing in government contracts, health care, litigation, intellectual property, public policy and a variety of other legal disciplines. For the past year, Crowell & Moring LLP has represented Rice University on federal affairs issues.

Thomas O'Donnell is a partner in Crowell Moring's public policy group and provides counsel on federal public policy matters, including economic regulation, appropriations and health care. He served as special assistant to the president and chief of staff of the White House National Economic Council from 1995 to 1997 and as chief of staff and general counsel of the President's Council of Economic Advisers from 1993-1995. O'Donnell also served as a member of the economic policy transition team for President Barack Obama.

John T. Brennan Jr. is a partner and co-chair of the firm's health care group. His broad-based practice includes a special focus on health care fraud and abuse matters, particularly relating to federal false claims, anti-kickback and physician self-referral (Stark Law) issues. Brennan advises health care clients on compliance matters and conducts internal investigations for potential fraud and abuse issues. His practice also includes advising clients, including academic medical centers, on reimbursement, transactional, certificate of need, licensure and certification and other regulatory and policy issues.

Kristina Pisanelli is an associate in the public policy group and represents educational institutions, corporations and nonprofit organizations on a broad range of public policy issues, including health care, education, the environment, science and technology and appropriations. Previously, she served as a legislative assistant to U.S. Sen. Patrick Leahy, D-Vt., where she advised the senator on a range of issues including health care and higher education.

Tell us about the health care reform bill passed by the House earlier this month: How close was the vote and what are some of the major provisions of the bill?

O'Donnell: [H.R. 3962](#), also known as the "Affordable Health Care for America Act," was passed on Nov. 7 by a vote of 220-215, after [Speaker Nancy Pelosi](#), D-Calif., secured enough support from conservative Democrats and one Republican.

According to the nonpartisan [Congressional Budget Office](#) (CBO), the gross costs of H.R. 3962 are approximately \$1.05 trillion over the next 10 years. CBO also projects that the legislation would reduce the deficit by some \$109 billion during that same period. If the House bill were enacted, estimates show that up to 96 percent of Americans would be covered by health insurance, with 15 million individuals added to the Medicaid rolls. However, 18 million individuals would remain uninsured, with the vast majority being non-citizens who reside in the country.

Pisanelli: Specifically, the House bill attempts to address several major deficiencies in the current health care system. For example, if enacted, the bill would provide approximately 36 million Americans currently uninsured with coverage, via an expansion of Medicaid and other subsidies, as well as a new national

insurance exchange. In addition, the House bill caps out-of-pocket expenses for individuals and families and prohibits insurance companies from denying coverage due to pre-existing conditions.

O'Donnell: Of course, any time Congress attempts to pass major legislation, controversy follows and the House health care reform bill is no exception. One issue that was particularly contentious, and remains so, was a last-minute amendment added to the House bill that would prevent the use of any government funds, including tax subsidies, to pay for a health plan that covers abortion services. This means that private insurance companies that offer a health plan through the new national insurance exchange that includes coverage for abortion services would have to offer a nearly identical plan that does not cover abortion services. Named for its author, Rep. Bart Stupak, D-Mich., the "[Stupak Amendment](#)" was allowed to come to a vote on the House floor by Pelosi in an effort to garner enough support from conservative Democrats to pass the overall bill. Although at least 10 conservative Democrats voted for the House bill after the Stupak Amendment was added, pro-choice Democrats have vowed to strip this amendment during the House-Senate conference committee that will reconcile the House and Senate health care reform bills before final passage of a single bill by both chambers.

Now that the House has passed the bill, what happens next? Does all the attention shift to the Senate?

O'Donnell: Yes. All the action is currently in the Senate where the road to passage is, as predicted, much more difficult. One thing is for sure: Senators will not be voting on the House bill language. Instead, they will substitute their own version of health care reform that will then need to be reconciled in a House-Senate conference committee before a final bill can be sent to President Obama for his signature.

Senate Democrats had hoped to have a final health care reform bill ready for Obama by early December. While that looks increasingly unlikely, Senate leaders have been working behind the scenes to merge two different health bills approved earlier this year by separate Senate committees. The Senate Health, Education, Labor and Pensions (HELP) Committee approved its version of a health care reform bill over the summer, while the Senate Finance Committee passed its version in October. On Wednesday, Nov. 18, [Senate Majority Leader Harry Reid](#), D-Nev., released a new merged Senate [bill](#), which the CBO estimates will cost \$848 billion over the next 10 years and reduce the deficit by \$127 billion during the same period. If enacted, the Reid legislation will provide health coverage to more than 94 percent of Americans and reduce the number of uninsured by 31 million.

Reid has moved quickly in the last day or so to schedule a key procedural vote on the new merged Senate bill. In short, Reid hopes that this procedural vote – now scheduled to take place Saturday evening – will garner the support of all 60 senators who caucus with Democrats in order to overcome a promised Republican filibuster. Keep in mind that this is only a procedural vote that, if successful, will allow the bill to then move forward to the Senate floor so that debate on the merits of the bill can begin, perhaps shortly after Congress returns from next week's Thanksgiving holiday recess. As of today, it is unclear whether Reid has the required 60 votes.

Pisanelli: Of course, one of the most difficult substantive issues in this health care reform effort is whether to include some sort of public health insurance exchange that would cover uninsured individuals – the so called "public option." The Senate HELP Committee included a public option in its bill; the Senate Finance Committee did not. Reid included a public option in his new proposal, but with an opt-out clause for each state to be able to decline participation. The House leadership has indicated that they could live with this version of a public option, but it is giving heartburn to several moderate Senate Democrats – none of whom Reid can afford to lose in any vote on the legislation.

As Tom noted, in order to move legislation (or even debate) forward, Reid needs to hold together all 58 Democratic senators – plus the two Independents who caucus with the Democrats. This is because under Senate procedural rules, 60 votes are necessary in order to bring the debate on any bill or motion to a close

– and to defeat a filibuster by the Republicans. Beyond the “public option” issue, other major issues to be resolved by the Senate before it votes on a final bill include the abortion issue which, as Tom explained, proved so controversial in the House, as well as the equally contentious issue of whether non-citizens will have access to health insurance programs.

With regard to the current House and Senate health care reform legislation, what are the top two or three concerns from the perspective of academic medical centers and/or teaching hospitals?

Brennan: The [Association of American Medical Colleges](#) (AAMC) has expressed its general support for the efforts of Congress and the Obama administration to implement reforms that will improve health care access, quality and affordability for all Americans.

However, the AAMC has reiterated its concerns about a number of key issues in both the House and Senate health care reform bills that pertain specifically to academic medical centers. For example, physicians face a 21.5 percent reduction in 2010 Medicare payments. Should such a reduction stand, this will have a negative impact upon medical schools since, according to AAMC, Medicare accounts for about one-quarter of all clinical medical school revenue. Senate relief from that provision is uncertain. In contrast, the recently passed House bill eliminates the reduction entirely and establishes a new physician payment plan.

Another important issue for the medical school community is the severe physician workforce shortage. For example, according to AAMC, by the year 2025, the nation will be facing a shortage of approximately 125,000 physicians. Expanding health care coverage to millions of additional Americans will only compound this shortage. Both the House and Senate health care reform bills attempt to address this issue, but it remains to be seen how much progress will be made.

Finally, other important provisions which the medical school community will watch closely include Graduate Medical Education (GME) workforce enhancements; the amount and timing of adjustments in Medicare and Medicaid disproportionate share hospital (DSH) payments as the ranks of the insured increase; and various incentives and disincentives for health care delivery systems, among many others.

We will report in more detail on these issues if the Senate approves health care reform legislation and the contours of a House-Senate conference committee then come into better focus.