

# Health problems

US health reform may escalate costs but will also create more captive healthcare funding opportunities

by John Cassell of Spring Consulting Group

Healthcare cost escalation remains one of the most serious challenges to the ongoing viability of the US economy, yet to any casual observer, achieving health reform must appear a near impossible task. There are deep divisions between the parties and serried ranks of special interest groups to be assuaged.

The health reform bill drafted by the Senate was moved onto the floor for debate by the narrowest of margins on 21 November in a rare weekend vote. Now with only a few weeks remaining, the Democrats are still aiming to pass legislation by the end of the year.

Standing in the way will be a series of daunting debates and many late nights consolidating this Senate bill with another somewhat different version from

Congress. Although some of the more contentious issues will undoubtedly be negotiated away in these last stages, some critical developments will potentially open up opportunities for captive funding. In addition, as many of the reforms will not be enacted until 2012-2014, there is time to increase the utilisation of captives as these programmes are refined and implemented.

## Co-operatives

Employees of small businesses are one of the largest groups of the uninsured in the US. Health insurance for small businesses is expensive and the government is therefore looking at co-operatives as a way in which small businesses can band together to buy health insurance at a lower cost. One legislative option pro-

poses to set aside \$6bn in federal funds to facilitate the establishment of health insurance co-operatives. Co-operatives, as currently proposed by both the House and Senate bills, will be required to be licensed in each state in which they operate. They will be subject to state solvency requirements and other state-mandated regulations.

There is a clear role for captives in the co-operative concept, and this has already been widely demonstrated. Numerous captives and risk retention groups (RRGs) are owned by co-operative groups of employers coming together to fund a variety of risks, including workers' compensation, medical malpractice and other property and casualty coverages. This well-established principle has been adapted for employee benefits and there are examples of captives and RRGs covering health insurance, life disability and retiree medical amongst others.

These types of structures match the government's plans in that their participants are able to purchase better-quality healthcare at lower cost using the captive-funding mechanism. These programmes are fully owned by their participants and health plans and health management programmes can be devised to meet the specific needs

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of particular groups. As the numbers of participants increase, their need to purchase reinsurance decreases and most risks can be absorbed within the captive. Cost savings are retained within the programme and are returned to participants via reduced health insurance charges or dividends.

These captive programmes differ from the government's plans in that they can be established without the need for government funding or government involvement. By operating on a national level and being structured under federal legislation, there is also no need to deal with individual state mandates. These state mandates will need to be followed in government-style co-operatives, making them more complex to establish, particularly on a multi-state basis.

There is increasing interest in developing this type of programme among employer groups and associations who already offer a variety of services to their members. In fact, the American Society of Association Executives (ASAE), an organisation whose members represent many of the associations in the US, has announced an initiative to build a co-operative programme for its members' organisations in recent weeks.<sup>1</sup>

In Massachusetts, Governor Deval Patrick has also announced that the state will immediately start to develop co-operatives for small businesses<sup>2</sup>, saying:

"The Division of Insurance will immediately conduct special sessions with stakeholders to plan the development of open-access purchasing cooperatives. The creation of group-purchasing co-operatives will allow small businesses and individuals to combine their purchasing power and seek out lower premiums through a larger entity. The co-operatives will not have membership restrictions, and the co-operatives will be able to choose and sponsor their own health products and health promotion programmes."

Some effort is being made to expand the administration's view to encompass these types of programmes which have valuable benefits for employer groups and for which there is real demand. Captives can clearly play a big role in making this happen.

#### Expanding coverage

Although the proposed numbers to be covered vary, one of the critical goals of health reform is to expand the coverage of health insurance to most of the population. Currently there is no mechanism

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for captive funding to work for individual health plans even if those individuals are part of a group or association.

However, in the employer setting, the incentives to ensure the small businesses, franchise operations and other often poorly covered groups may well create opportunities for captive funding. Organisations that decide to expand their health coverage by introducing voluntary programmes can also use a captive funding mechanism and this may become more prevalent in the future as the cost of adding benefits on a fully funded basis becomes prohibitive.

#### Coverage for pre-65 retirees

Providing coverage for early retirees has always been a problem and for retirees not yet 65 (and therefore not eligible for Medicare), not having retiree healthcare means they must either continue working to use employer health benefits or pay large amounts of money for individual coverage.

Current reform plans include 'Reinsurance for retirees', which would reimburse employers, tax-free, 80% of an individual's healthcare claims that cost between \$15,000 and \$90,000. Employers would be eligible if, among other things, they offered programmes and procedures to generate cost savings for retirees or their spouses or dependents with chronic and high-cost conditions. The proposal has slated \$10bn for this retiree reserve trust fund.

This could provide captives with an opportunity to provide reinsurance over \$90,000 stop loss maximum for this risk pool since many pre-65 retirees have claims in excess of \$90,000.

#### Insuring across state lines

The Senate Bill is proposing to allow insurers to offer a uniform national health plan in the states they are licensed and also proposes to permit states to form healthcare choice compacts, which would

allow insurers to sell policies in any state participating in the compact. Allowing insurers to sell across state lines may help to reduce some of the few remaining pockets of state resistance to health group captives or RRGs. In some states where there is limited competition, this would provide some welcome competitive relief. However, the Senate bill also allows states to opt out of the national plan, so it is unclear which states would choose that option.

The flexibility to operate across state lines will also create a potentially better environment for healthcare captives using a group captive or an RRG as a base. To date, certain states (California, for example) have disputed this development despite the obvious advantages to multi-state employer groups. Association and employer group captives currently need to consider local fronting arrangements to provide coverage in these states at extra cost.

#### Where do we go from here?

At this stage in the proceedings there is a clear indication that health reform will happen: the core principles are being set, but implementation is being pushed off, in many cases for several years. There are many opportunities emerging for the captive industry to be part of improving the quality and availability of healthcare for Americans.

During this period of implementation, we can take many of the principles that have been established for other risks and ensure that they can be applied to healthcare and other benefits under the reform. By tracking and influencing the way in which state and federal legislation changes, new avenues can be opened for alternative funding structures that will provide more efficient options compared with traditional insurance models.

<sup>1</sup> Letter to Congress from John H Graham President and CEO ASAE 14-10-09

<sup>2</sup> Massachusetts Governor Unveils Reforms To Reduce Healthcare Cost Burden For SMEs press