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Health Care ALERT

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What the Health Care Industry Can Expect From HHS Secretary Daschle

President-elect Barack Obama has reportedly offered the post of Secretary of Health and Human Services (HHS) to former Senate Majority Leader Tom Daschle. Senator Daschle, who is likely to receive easy Senate confirmation, has a long history of health care reform advocacy. Broadly consistent with President-elect Obama's health care program as laid out during the campaign, Senator Daschle's upcoming tenure as Secretary points to some clear priorities with significant impact on health care providers.

During his time as Majority Leader, Senator Daschle did not cosponsor many bills in this area. However, his frequent statements and voting record on health care and related issues point to a consistent reform agenda. The same views are confirmed in a book published earlier this year, *Critical: What We Can Do About the Health-Care Crisis*. Among the key points:

- Creation of a "Federal Health Reserve" ("Fed-Health"), which he says is "modeled loosely" on the Federal Reserve System for banking, which would make "critical, difficult health policy decisions" in place of a political actor and, to a great extent, insurers, pharmaceutical firms, and health care providers.

- A mandate that all individuals "be required to have [health] insurance just as they do housing insurance or car insurance."

- Restructuring the current Medicare prescription drug system, which he terms a "failure" designed to force seniors into HMOs. Importation of "safe lower-cost drugs from Canada and other countries" is a key part of his plan. States would also be permitted to make bulk purchases of drugs, using their purchasing power to force drug companies to sell at lower cost.

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These points are further examined below:

Fed-Health: The Roles of Government and Health Care Companies

The essence of Senator Daschle's proposal is that key health care policy decisions should be insulated from political and profit motivations: Decisions made "by Fed-Health cannot be made well by elected officials, warranting an extraordinary delegation of power." He believes this can create a viable "private system in a federal framework" and sees as a model the British National Institute on Clinical Excellence (NICE), which develops guidelines for the National Health Service (NHS). Among the key features of Fed-Health:

- Fed-Health members would be independent, Senate-confirmed experts: clinicians, health benefit managers, health economists and researchers, and similar experts. It would also have a large staff of analysts to assess and produce the research needed for its decisions.

- Fed-Health would be financed under federal health programs proportionate to their spending, though he has not spelled out the cost and percentages.

- A key lever would be the Fed-Health staff's recommended rankings of health care services by cost and effectiveness, with Fed-Health appointees then formalizing the ranking to set model coverage and cost sharing policy, with, as necessary, adoption of processes for exceptions to these rules and separate policies for vulnerable populations.

- Fed-Health would "promote best practices and protocols" by working at the regional level with providers and insurers to develop effective performance profiles and, possibly, policies linking payment to value.

Senator Daschle believes Fed-Health "would have teeth" because the 100 million Americans now covered by federal health care programs (such as Medicare, Medicaid, and Tricare) currently constitute 45 percent of all health expenditures. "Conforming benefit policies across these programs would be a major step toward a more rational, seamless, and efficient health system." However, like the Federal Reserve, the Fed-Health would not literally regulate the private coverage system, but rely on a "spill-over" effect of its recommendations.

Fed-Health decisions would be made by a committee of private-sector and regional experts, not a single political appointee, or by health care, drug, or insurance companies.

Taken together, the Daschle recommendations fall well short of a "single-payer" government-run health plan, to which President-elect Obama has also stated his opposition. As envisioned, it would rely primarily on its expert recommendations and influence and cooperation

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with the private sector. At the same time, its purview could be expanded by later legislative action: "Congress could opt to go further with the Board's recommendations. It could, for example, link its use to tax subsidies for health insurance."

Prescription Drugs

As noted above, Senator Daschle favors state bulk purchasing of drugs to strong-arm down prices. In May 2003, together with 29 other Senators, he wrote to then-HHS Secretary Tommy Thompson to urge him not to interfere with Maine's bulk purchasing program, which the signers considered a model for other states. It is noteworthy that this is an issue on which future Secretary Daschle can act largely within his own executive authority, without the need for Congressional action.

The centerpiece of both the Daschle and Obama approaches to the cost of prescription drugs is broadening their importation into the United States:

- Besides the lower cost of production abroad, imported drugs' lower cost also reflects government-imposed price controls in many countries (Canada is usually cited), which force drug companies doing business in those countries to make up the difference in countries, like the United States, where prices are not imposed. Thus, importation of lower price drugs – or in many cases, drugs originally made in the U.S., then exported, and then re-imported into the U.S. from abroad – effectively means importation of other countries' price controls.

- In political usage, the drug importation issue usually is phrased as "importation of safe Canadian drugs," but it will be hard to control where they in fact come from, especially when ordered from websites. The legislative process will have to focus on a number of concerns about quality and safety (drugs originating in China will be a major focus), price impact on domestic drugs and, especially, the cost of research and development.

The legislative process is likely to expose some serious difference in priorities between foreign- and US-based companies.

Focus on the Future

It remains to be seen what kind of program the Obama Administration will propose and what will happen in Congress. By February 2009 a better picture will emerge of the initiatives that will be floated by the new Administration, along with Congressional hearings and perhaps bills introduced. This will enable a better assessment of potential impact on life sciences firms, pharmas, health care providers, etc.

At the same time, it will be early enough in the process

that nothing will yet be written in stone and polices will still be amenable to modification and, if needed, blocking. Regarding the latter, even if there is cloture strength in the Senate, which is not clear at this time, the differing interests and perspectives of individual Senators are varied enough that it is unlikely the enhanced Democratic majority will be able to run bills through without opposition capable of forcing some changes. (In the House, by contrast, it can be expected that the trains will run pretty much on time.)

It is imperative that affected firms monitor developments closely and participate in efforts to influence formation of policies, laws, and regulations that may have a profound impact on their business.
