

The Health Reform Insider

Posted: 02 Feb 2010 10:00 AM PST

“Health reform is on life support unfortunately”—*Sen. Mary Landrieu*

“The lady doth protest too much, methinks”—*Gertrude in Hamlet*

“Reports of my demise are greatly exaggerated”—*Mark Twain*

A lot of ink has been spilled over repeated pronouncements of those declaring health care reform dead, or nearly so. The fact that they have to assert it over and over suggests a) that they would like it to be true and b) that it's not.

In mulling the new Congressional math coming out of the surprising victory of Massachusetts State Senator Scott Brown in the special election to replace Ted Kennedy, it's useful to remember that the votes of neither the conservative Senate Democrats nor the ultra-conservative House Republicans who dominate the doom and gloom set are expected or needed for final passage.

Passing the Senate-approved bill in the House alongside a reconciliation bill containing the key amendments negotiated by Congressional leaders and the Obama administration prior to the Brown election offers a clear opportunity to enact almost the same bill that would have been enacted before the election. Indeed, it's the *only* opportunity to pass a comprehensive bill in the near future. There are signs that both the House and Senate leadership are pursuing this path and that the votes are there in each chamber, at least in theory.

This can be done. There is no insurmountable obstacle to moving forward and there's a compelling case to be made, both politically and policy-wise, for doing so. After a period of uncertainty, leaders in both branches and the administration (for the most part) appear to have reached that same conclusion.

That said, there is still no guarantee of success, and there are several significant hurdles to clear before a signing ceremony.

Hurdle one: Policy and politics

The first obstacle is getting agreement on the elements that could pass as part of a reconciliation bill to accompany the Senate language. Key provisions of the agreement negotiated just before the Brown election included removing special treatment for the Nebraska Medicaid program, increasing affordability protections for low- and moderate-income families, closing the Medicare Part D “doughnut hole,” making changes to the Senate plan to impose an excise tax on high-cost health insurance and increasing federal oversight of health insurance Exchanges.

Most of these elements could be included in a reconciliation bill, though it's unclear whether or to what extent changes in the Exchanges would pass muster, since any provision passed via reconciliation must have more than an incidental effect on the federal budget. There is also a push to reopen the negotiations to revisit yet again the excise tax on high-cost health plans and the public option.

The excise tax: Once more, with feeling

Taxing high-cost health plans has been one of the most contentious issues throughout the debate. Although some significant changes were negotiated in the Senate plan that won labor backing, many in the House are calling for that deal to be reopened and for the tax to be dropped altogether. Some fear that one of the changes, a special temporary exemption for plans negotiated through collective bargaining, will look like one more special interest deal. House members raise a number of both policy and political concerns, so here is a review of the issues at stake.

Pro

The current tax exemption of employer-sponsored health benefits provides a disproportionate benefit to the wealthiest households and nothing for the predominantly low-wage workers who lack health insurance. The excise tax, which would be levied on insurers that sell the most expensive plans, is scored by the CBO as reducing health care spending over the long run and it is one of the few sources of financing on which the Senate has been able to agree. Without that money, Congress may be forced to make reductions in the affordability protections which would, in turn, strike at the core architecture of the bill—and Community Catalyst's top priority in national health care reform. Without adequate subsidies and cost-sharing protections, the individual mandate becomes unworkable.

Con

"Overinsurance" is not a very convincing explanation for high U.S. health spending, and the tax will give insurers and employers an incentive to reduce the cost of the plans they offer. There are a number of ways to do this. Insurers could work to improve care delivery or they could reduce provider payments, but the path of least resistance is likely to be to skinny down coverage. This is exactly the opposite of what the American people want to happen.

People are looking for lower cost-sharing, not higher, regardless of whether health economists argue the tax will reduce aggregate spending—a goal that does not mean much to the average person. The excise tax not only consistently polls badly, but is also strongly opposed by organized labor which provides a disproportionate share of voters and dollars for Democratic candidates.

Further complicating the issue is that the policy itself is not well-drafted and, in the face of opposition, the response until recently had been simply to make the tax smaller rather than to make it better. The tax, as drafted by the Senate, did not adequately address the fact that plans may be high-cost—not because they have unusually rich benefits, but because of the age, gender, health status, occupation or geography of enrollees. The most recent changes have attempted to address some (but not all) of these problems.

Public option

Some progressives, both in and out of Congress, are calling for the return of the public option. They point out that since a reconciliation bill only needs 51 votes, the objections of conservative Senate Democrats who helped to toss the public option overboard is less important. Polling also shows that the American people still support the public option (though it is not the most important issue to them).

There are two problems with this argument. The first, as discussed below, is that working out an acceptable public option takes time, which is in short supply if we are going to get health care reform done.

The second problem lies more with the supposedly more liberal House than with the Senate. House leaders are still in search of 218 votes. While Speaker Pelosi has said the votes are there, there is still work to do. Several House members who provided the margin for victory the first time around are expected to vote no because of the Senate bill's abortion provisions. Getting to 218 therefore means flipping first-round no votes to yes among Blue Dogs and other conservative Democrats—the same House Democrats who have been least supportive of the public option.

Hurdle two: “No, please, after you,” aka the trust deficit

The cooperation among committees of jurisdiction in the House and the Senate and commitment of all the key players to move forward this past year represents a stark difference from the reform attempt in the 1990s. But a problem has emerged that didn't come up last time because a bill never got this far: The lack of trust between the branches. The adage, attributed to former House Democratic Speaker Sam Rayburn, that “the Republicans are our opponents, but the Senate is our enemy” captures the spirit of the current atmosphere, and this lack of trust and cooperation between the branches is one of the biggest obstacles to moving forward.

The House is afraid that if they pass the Senate bill first, the Senate won't take up and pass the agreed on amendments through reconciliation. They want the Senate to move first, which greatly complicates the process because of the rules that govern the reconciliation process. For its part, the Senate thinks the House is making unreasonable demands in order to make the Senate look bad and blameworthy if health care reform doesn't pass. These issues can be worked out, but it will take time, which brings us to the final hurdle....

Hurdle three: Time is not on our side

With popular support for health care reform below 50 percent—even if that's based on a lack of understanding of what is actually in the bill—Democrats are eager to shift their focus. Top on their list is job creation and banking regulation.

But while a short breather might be helpful in nailing down the details of path and content for health care reform, time is running out. The closer it gets to the election, the harder it will be for some members of

Congress to take what many consider to be a tough vote. And for various reasons, the parliamentary path that health care has to travel now becomes more difficult the longer we wait.

The bottom line is that a comprehensive bill still has a good shot at passage, but the opportunity is time-limited. **We all have to make a strong all-out push in the next few weeks.**

As the Super Bowl approaches, we go to the football analogy file. We're just a few yards from the goal line, but it's late in the fourth quarter. We just used our last time out and the game clock is ticking. Let's carry it across.