

State Opt-Out Compromise Salvages Public Option in Senate

Just when it looked like it was dead in the water, two weeks ago Senate Majority Leader Harry Reid (D-NV) breathed new life into government-run health insurance when he announced that the Senate version of health-care reform will include a public option.

As envisioned by Reid, the bill would draw from aspects of the Affordable Health Choices Act -- proposed in July by the Senate Committee on Health, Education, Labor and Pensions (HELP) -- and a bill that emerged from the Senate Finance Committee at the end of September.

At its core the draft legislation relies on health insurance exchanges -- a sort of national marketplace where people can comparatively shop for coverage -- to spur consumer choice and competition, with a government-run insurance plan among the choices. But unlike the earlier HELP proposal, which included a "robust" public option, under Reid's version states would be permitted to opt out of the public plan if they so choose.

As the *Tribune* went to press, the legislation -- which still lacks final language -- was undergoing a cost analysis by the Congressional Budget Office (CBO). Congressional aides think that could be complete sometime this week.

In moving forward with his plan, Reid sidestepped a proposal by Senate Finance Committee Chair Max Baucus (D-MO) that would have substituted member-owned health-care co-ops for a public option. Under the Baucus bill, the government would have provided \$6 billion in federal seed money to assist with co-op start-up costs, but the plan would have prohibited a co-op from being government sponsored.

Reid's decision to back the divisive public option was, in part, an attempt to placate progressive Democrats who saw the co-op plan as an unacceptable compromise that watered down real reform. Some liberal Democrats had vowed to oppose any bill that did not include a public option. Reid said his plan will include Baucus' nonprofit member co-ops, but adds the government-run plan as a safety net for the most vulnerable uninsured.

Senators Tom Carper (D-DE) and Charles Schumer (D-NY) -- both members of the Finance Committee -- began pushing the state opt-out compromise in early October as a means of reaching a consensus that would be acceptable to both progressives and party centrists who have opposed a public option.

Around the same time, 30 Senators (29 Democrats and Vermont Independent Bernie Sanders) penned a letter to Reid urging him to include a public option in the final bill. Both of Pennsylvania's Democratic Senators, Bob Casey and Arlen Specter, were signatories.

“We have spent the better part of this year fighting for health reform that would provide insurance access and continuity to every American in a fiscally responsible manner. We are concerned that – absent a competitive and continuous public insurance option – health reform legislation will not produce nationwide access and ongoing cost containment,” the lawmakers wrote.

Asked to comment on Reid’s proposal, Casey – who sits on the HELP Committee and helped draft the original legislation – expressed tentative support for the compromise.

“I voted for the original HELP bill that included a public option, but if getting a bill passed means including a state opt out then I’d definitely support that; but of course I’d want to see the language first,” Casey said.

Yet Reid’s decision to include a government-run plan was as much a bow to public sentiment as it was an attempt to bridge party differences. Despite the best efforts of opponents to present a unified populist front against a public option, a majority of Americans do in fact support one.

National surveys have consistently shown that at least 55 percent of Americans favor a new government insurance plan. Most recently, results of a Washington Post-ABC News poll released at the end of October showed that 57 percent of Americans support a public plan; make it a state-run plan for the poorest Americans and support jumps to 76 percent, the poll shows.

Devil in the Details

To date, the specifics of exactly how the Senate’s state opt-out provision will work are sketchy. In a Nov. 2 letter to Senate Republicans, Reid said a final bill would only take shape after the CBO finalizes its analysis.

“Apart from my decision to include a public option from which states may opt out, no final decisions have been made – and none can be made until we get more information about how CBO would score different combinations,” he said. “In other words, there is no bill to release publicly – it does not exist.”

This much seems certain. After the public option goes into effect, which isn’t likely to happen until 2013, states would be given some timeframe to decide not to participate. In an Oct. 26 press conference, Reid said states would “have until 2014” – or one year after inception -- to choose. But since then there have been some reports that states will actually be locked in until 2014, after which they can opt out.

Another important question that remains unanswered is exactly how a state will opt out. There are two likely scenarios: a state will hold a public referendum, such as a ballot measure; or, the opt out will be affected through a legislative process, requiring a governor’s signature.

Whichever the case, state legislators have responded positively to the plan. The National Conference of State Legislatures (NCSL) – which represents state governments – has made support of a public option part of its official policy, and recommended “allowing states to use a public insurance option at their discretion” in an Oct. 21 letter to Senate lawmakers.

Pennsylvania Senator Shirley Kitchen – who serves on both the State Senate’s Public Health & Welfare Committee and in Governor Rendell’s Office of Health Care Reform -- says she’s spoken about the new opt-out clause with colleagues, but is waiting to see a final version of the bill before passing judgment.

Kitchen, who represents Pennsylvania’s Third Senatorial District -- which covers North Central Philadelphia -- and has been a supporter of a public option, does say that if the Reid proposal passes, she’d like to see an opt-out decision left up to the voters, in a statewide referendum.

“I think everyone should have a chance to vote on it. After all this is an issue that affects all people individually and so the voters should be able to voice their own opinion,” she said. “I wouldn’t want to see this left up to a legislative process or we could see it turn into something like we saw with the budget.”

Kitchen is referring to Pennsylvania’s budget impasse, which dragged on for months before legislators and the Governor finally reached a consensus in September.

Who Might Opt Out?

While it’s much too soon to tell which, if any, states might choose to opt out of a public option under Reid’s plan, the general consensus among observers is that they will be few and far between.

Darrell M. West, vice president and director of governance studies at the Brookings Institution, says states with conservative voters or strong private health insurance companies will be the most likely to face strong pressure to exit the public option.

“Regardless of whether the venue turns out to be a legislative decision or a public referendum, we should expect intense lobbying and spending from those who feel strongly about the issue,” West writes in *Politico*.

According to the NCSL, there are 14 states whose legislatures are controlled by Republicans. But that could be a nonissue if the decision is ultimately left up to the electorate.

“I think you’re going to see that once this goes into effect, is in practice, and there’s evidence that it’s working, you’ll see far fewer states than you’d expect choosing to opt out,” said Sen. Casey.

Some GOP politicians have tentatively said they will pursue that course. For instance, Minnesota's Republican Governor Tim Pawlenty said he would likely lead a charge in his state to opt out.

Pennsylvania has a split legislature: Republicans control the Senate, while the House is led by Democrats. Add in our Democratic governorship and an opt out is unlikely under current leadership. If left to a referendum, though, evidence suggests a decision could be close.

A Rasmussen poll conducted at the beginning of October finds Pennsylvania voters are nearly split down the middle on support for a public option. Democrats outnumber Republicans in the Keystone State by a margin of 1.2 million registered voters. Among registered Democrats, 66% support a public plan, while only 21% oppose one.

"I think the opposition [in Pennsylvania] will mount a challenge, but look this is a problem that's all across Pennsylvania, you have people working in factories, small businesses, on farms and in low paying jobs who struggle every time they see a doctor, so I think eventually Pennsylvania will be part of reform and the majority of legislators will appreciate the benefit it will bring to their constituents," said Kitchen.

Getting it to the Floor

There are 58 Democratic senators, and two independents who caucus with the Democrats and tend to vote with them. But, a day after Reid announced his plan, Joe Lieberman (I-CT) said he wouldn't vote for it.

"To put this government-created insurance company on top of everything else is just asking for trouble for the taxpayers," Lieberman said. "Even with an opt-out because it still creates a whole new government entitlement program for which taxpayers will be on the line."

That means in order to garner the 60 votes he'll need to break a sure-to-come Republican filibuster, Reid will have to gain the support of at least one Republican; and that's assuming he can get his own party on board.

It remains to be seen if centrist Democrats like Sen. Mary Landrieu (D-LA), Blanche Lincoln (D-AK) and Ben Nelson (D-NE) – all of whom have opposed a public option in the past -- will warm to the new compromise.

Last week there were conflicting reports about whether Lieberman would ultimately back a Republican filibuster, with *The Hill* reporting that the Connecticut Independent had reached a "private understanding with Majority Leader Harry Reid that he will not block a final vote on healthcare reform."

Before that story had even circulated, however, Lieberman communications director Marshall Wittmann had issued a denial.

Sen. Casey says he's confident Democrats will get the 60 votes necessary for a motion to proceed to debate, which will start the amendment process. But the next step, moving the bill to a floor vote, will prove trickier. Casey says there are likely to be "hundreds" of proposed amendments to the bill once it moves into the debate phase.

That has some congressional watchers expressing skepticism that a bill could be passed before the end of the current session, less than eight weeks away. President Obama has said he wants health care reform passed by the end of the year.

Sen. Reid however, says he won't be rushed.

"We're not going to be bound by any timelines," Reid told reporters in Washington last week. "We're going to do this legislation as expeditiously as we can, but we're going to do it as fairly as we can."

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