

Majority Rule on Health Care Reform

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Editorial

The talk in Washington is that Senate Democrats are preparing to push through health care reforms using parliamentary procedures that will allow a simple majority to prevail in their chamber, as it does in the House, instead of the 60 votes needed to overcome the filibuster that Senate Republicans are sure to mount.

With the death of Senator Edward Kennedy, the Democrats do not have the votes just among their 57 members (and the two independents) to break a filibuster, and not all of these can be counted on to vote in lock step. If the Democrats want to enact health care reform this year, they appear to have little choice but to adopt a high-risk, go-it-alone, majority-rules strategy.

We say this with considerable regret because a bipartisan compromise would be the surest way to achieve comprehensive reforms with broad public support. But the ideological split between the parties is too wide — and the animosities too deep — for that to be possible.

In recent weeks, it has become inescapably clear that Republicans are unlikely to vote for substantial reform this year. Many seem bent on scuttling President Obama's signature domestic issue no matter the cost. As Senator Jim DeMint, Republican of South Carolina, so infamously put it: "If we're able to stop Obama on this, it will be his Waterloo. It will break him."

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Superficially seductive calls to scale down the effort until the recession ends or to take time for further deliberations should be ignored. There has been more than enough debate and the recession will almost certainly be over before the major features of reform kick in several years from now. Those who fear that a trillion-dollar reform will add to the nation's deficit burden should remember that these changes are intended to be deficit-neutral over the next decade.

Delay would be foolish politically. The Democrats have substantial majorities in the House and the Senate this year. Next year, as the midterm elections approach, it will be even harder for legislators to take controversial stands. After the elections, if history is any guide, the Democratic majorities could be smaller.

Mr. Obama should know from sad experience the pitfalls of seeking bipartisan cooperation from a Republican Party that has sloughed off most of its moderates and is dominated by its right wing. His stimulus package was supported by no Republicans in the House and only three Republicans in the Senate, so-called moderates whose support was won by shrinking the package below the size at which it would have done the most good.

Now the same sort of damaging retreat may be happening in the Senate Finance Committee. Three committees in the House and one in the Senate have used their Democratic majorities to

approve liberal health reform bills. The only bipartisan negotiations are between a rump group of three Democrats and three Republicans on the Finance Committee who hail from largely rural states with small populations, namely Iowa, Maine, Montana, New Mexico, North Dakota and Wyoming. Somehow this small, unrepresentative group has emerged as the focal point for bipartisan health care reform.

The six have been working hard to reach agreement, but the concessions demanded by Republicans will most likely make the reform effort weaker and smaller. They could, for example, reduce the scale of the program and the subsidies for low-income people; drop the idea of a government-run insurance plan to compete with private insurers; and eliminate a requirement that employers offer coverage to their workers or pay a penalty.

Even if the group reaches an agreement, which is by no means certain, its compromise is unlikely to win support from a Republican Party that seems bent on delay. Leading Senate Republicans have seen little in the emerging compromise that they are willing to support.

Two of the Republicans working on the compromise — Charles Grassley of Iowa and Michael Enzi of Wyoming — have said they would not vote for a bill that could not win broad support, which Mr. Enzi defined as 75 to 80 senators, implying that roughly half of the Senate's Republicans must sign on. That is unlikely — no matter how good or bipartisan or middle-of-the-road any bill may be.

The Democrats are thus well advised to start preparing to use an arcane parliamentary tactic known as “budget reconciliation” that would let them sidestep a Republican filibuster and approve reform proposals by a simple majority.

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The approach is risky. Reconciliation bills are primarily intended to deal with budget items that affect the deficit, not with substantive legislation like health care reform. Senators could challenge as “extraneous” any provisions that do not change spending or revenues over the next five years, or would have a budget impact that is “merely incidental” to some broader policy purpose, or would increase the deficit in Year 6 and beyond.

So how much of the proposed health care reforms could plausibly fit into a reconciliation bill? The answer seems to be: quite a lot, though nobody knows for sure.

Knowledgeable analysts from both parties believe that these important elements of reform will probably pass muster because of their budgetary impact: expansion of Medicaid for the poor; subsidies to help low-income people buy insurance; new taxes to pay for the trillion-dollar program; Medicare cuts to help finance the program; mandates on individuals to buy insurance and on employers to offer coverage; and tax credits to help small businesses provide insurance.

Even the public plan so reviled by Republicans could probably qualify, especially if it is given greater power than currently planned to dictate the prices it will pay to hospitals, doctors, drug companies and other providers, thus saving the government lots of money in subsidies.

Greater uncertainty surrounds two other critical elements: new rules requiring insurance companies to accept all applicants and charge them the same premiums without regard to medical condition, and the creation of new exchanges in which people forced to buy their own insurance could find cheaper policies than are currently available.

Republicans claim that they want to make medical insurance and care cheaper and give ordinary Americans more choices. But given their drive to kill health reform at any cost, they might well argue that these are programmatic changes whose budgetary impact is “merely incidental.” Democrats would very likely counter that they are so intertwined with other reforms that they are “a necessary term or condition” for other provisions that do affect spending or revenues, which could allow them to be kept in the bill.

Nobody knows how the Senate parliamentarian, an obscure official who advises the presiding officer, would rule on any of these complicated issues. But if he were to take a narrow view and eliminate important features, it could leave the reform package riddled with holes — perhaps providing subsidies to buy insurance on exchanges that do not exist, for example. Thus there are plans afoot to use a second bill to pass whatever reforms will not fit under the rubric of reconciliation, but those would be subject to filibuster and would have to depend on their general popularity (insurance reforms are enormously popular) to win 60 votes for passage.

Another hurdle is that the reconciliation legislation covers only the next five years, while the Democratic plans are devised to be deficit-neutral over 10 years. The practical effect is that the Democrats will almost surely need to find added revenues or budget cuts within the first five years.

Another Senate rule, which applies whether reconciliation is used or not, requires that the reforms enacted now not cause an increase in the deficit for decades to come, a difficult but probably not impossible hurdle to surmount.

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Clearly the reconciliation approach is a risky and less desirable way to enact comprehensive health care reforms. The only worse approach would be to retreat to modest gestures in an effort to win Republican acquiescence. It is barely possible that the Senate Finance Committee might pull off a miracle and devise a comprehensive solution that could win broad support, or get one or more Republicans to vote to break a filibuster. If not, the Democrats need to push for as much reform as possible through majority vote.