



Insight

Reconciliation Isn't Health Reform Answer

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The Democrats' plan to pass health care reform using the so-called "reconciliation" process is at odds with both congressional intent and the history of this budgetary practice.

And before you dismiss this as just a partisan view intended to stop health reform, let's set the record straight: Arguments against the use of reconciliation for major policy changes have been a bipartisan affair almost since the rule was enacted.

Some background.

Sen. Robert Byrd, D-W.V., created this process in 1974 to enhance Congress' ability to reduce deficits. And there have been 22 reconciliation bills since, most of which were, in fact, attempts to reduce budget deficits. But a few others have been used to pass tax cuts or pursue policy initiatives. Indeed, reconciliation has been used for health issues such as the COBRA rules requiring employers to offer health insurance to former employees.

Why, then, not use it for health care reform?

It's important to understand that a reconciliation bill passes the Senate with only 51 votes — not the 60 that are required when something called "cloture" is filed to end debate and proceed to final passage of the bill. (Sen. Byrd once called reconciliation "a super gag rule, the foremost ever created by this institution.")

In exchange for the strict limits placed on minority rights in the Senate, reconciliation puts strict limits on what can be included in such a bill, requiring that anything considered have a budgetary impact. Any legislation moved under the process is also subject to the Byrd rule, which strips any provisions that don't impact the budget either through taxes or spending.

These limits have long been recognized by Democrats, who've ended up stripping out social reforms because they couldn't pass Byrd rule muster.

For example, in 1993 House Budget Chairman Martin Sabo, D-Minn., noted that the Byrd rule "requires the dismemberment of comprehensive legislation unless each and every piece can be tied to particular budget savings." As a result, several provisions related to preventing Medicaid fraud had to be dropped because the savings would accrue to the states with little federal impact. Likewise, in that same bill, mandated benefits for Medicaid and Federally Qualified Health Centers were dropped.

In 1995, Sen. James Exon, D-Neb., then the ranking Democratic member on the Senate Budget Committee, submitted a list of "extraneous items" he believed were in the reconciliation bill being debated at the time.

Among them were provisions related to limitation on federal spending for funding of abortions, treatment of assisted suicide and abstinence education.

And back in 1989, Senate Majority Leader George Mitchell, D-Maine, together with many of the Senate leaders of the day (Bob Dole, Pete Domenici, Bob Packwood, Byrd, Lloyd Bentsen, and Jim Sasser) decided to strike a variety of items they believed were inappropriate to a reconciliation bill, including popular rural health care proposals.

Senate Budget Chairman Kent Conrad, D-N.D., recognized these limits as well, noting on CBS News' "Face the Nation" that "the major package of health care reform cannot move through the reconciliation process. It will not work because of the Byrd rule, [which] would eliminate all the delivery system reforms, all the insurance market reforms; all of those things the experts tell us are really the most important parts of this bill." (Conrad later clarified himself, saying that he thought it could be used for so-called "side-car" strategy planned by Democrats, whereby the House passes the Senate bill and uses reconciliation only to make certain fixes to it.)

The senators' caution is echoed by the Senate parliamentarian's office, which has generally tried to limit the use of budget reconciliation because its fast-track procedures are contrary to the Senate's history as a deliberative body with full amendment and debate. In one case, for instance, the parliamentarian ruled that coal miners' retiree health costs were unfit for reconciliation.

The parliamentarian will likely use these precedents to exclude provisions such as changes being made to abortion funding or illegal immigrants purchasing insurance on exchanges.

The bottom line is that reconciliation and the Byrd rule are not suited to passing massive legislation like the health care bill before Congress. That is a simple fact borne out by past experience.

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