



## Perspective

### The Baucus Bill and the Hope for Reform

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After months of wrangling with Republicans over the appropriate role of government in health care, the Senate Finance Committee's 13 Democrats were joined by a lone Republican,

Senator Olympia Snowe of Maine, on October 13 in approving a reform bill that would establish a mandate for most individuals to obtain health insurance. The 14-to-9 vote by the panel, chaired by Senator Max Baucus (D-MT), moved the reform process to the next step: blending the Finance Committee bill with a more liberal one previously approved by the Senate Health, Education, Labor, and Pensions Committee. Snowe said that her decision about whether to vote for a reform bill on the Senate floor would depend on how the two bills were melded.

In a committee room packed with people hanging on her every word, Snowe explained why she

was joining the Democrats in approving the bill crafted by Baucus, lending substantial momentum to the pursuit of reform. "Is this bill all that I would want? Far from it. Is it all that it can be? No. But when history calls, history calls. And I happen to think that the consequences of inaction dictate the urgency of Congress to take every opportunity to demonstrate its capacity to solve the monumental issues of our time." President Barack Obama characterized the Finance Committee's action as "a critical milestone" but added, "Now is not the time to pat ourselves on the back. . . . Now is the time to dig in and work even harder to get this done."

At a cost of \$829 billion over 10 years (starting in 2013), according to the Congressional Budget Office (CBO), the measure would extend coverage to 29 million people under 65 years of age, increasing to 94% the proportion of legal U.S. residents under the age of 65 who have insurance, but it would leave uninsured another 25 million people, about one third of whom are illegal immigrants. The bill would cut the federal deficit by \$81 billion over a decade, the CBO estimated, and would thus comply with President Barack Obama's pledge that reform will not cost the Treasury "one dime." The bill's costs would be paid for through reductions in the growth of expenses for Medicare, Medicaid, and other programs (totaling \$404 billion) during the next decade; an excise tax of 40% on "Cadillac" private insurance policies (yielding \$201 billion); new

fees charged to the manufacturers of drugs and medical devices; penalty payments imposed on persons who remain uninsured; and a variety of smaller revenue sources. The bill does not include a new public insurance option — a feature that liberal Democrats consider essential to any reform package and that is central to the reform measures approved by three House committees and another Senate panel.

In addition to mandating the purchase of coverage by most individuals, the Finance Committee's bill would create insurance exchanges through which certain individuals and families could purchase coverage, in some cases with the help of federal subsidies. It would also significantly expand Medicaid eligibility, substantially reduce the growth of Medicare's payment rates for most nonphysician services, and eliminate the 21% cut in the Medicare physicians' fees that would otherwise take effect January 1, 2010. Reductions in physicians' fees scheduled for future years are left untouched by the bill — including a 25% cut slated to take effect January 1, 2011 — because eliminating the cuts would cost Medicare an estimated \$240 billion over a decade.

Like the other four current reform bills, the Finance Committee bill would impose tighter regulations on the practices and products of private insurers. The measure would bar insurers from discriminating against people on the basis of their health status, from denying coverage because of a preexisting condition, and from imposing annual or lifetime limits on coverage. America's Health Insurance

Plans (AHIP), which represents the industry, had volunteered to accept such restrictions if "all Americans" were covered. With 25 million people left uncovered by the Baucus bill, however, some insurers have begun to balk at supporting such regulations.

Although the emphasis of the Finance Committee's bill, and the source of most of its cost, is expanded coverage, a variety of other provisions would also affect physicians. The bill encourages the development of new patient care models, provides bonuses to physicians whose practices emphasize primary care services, authorizes the redistribution of unused residency training positions funded by Medicare, and creates a Medicare commission that would be charged with recommending to Congress ways to slow the growth of the program's spending. The bill also requires the Department of Health and Human Services (DHHS) to screen all providers and suppliers before granting Medicare billing privileges, and it requires manufacturers of covered drugs, devices, biologic agents, and medical supplies to report annually to the DHHS any payments or other transfers of value it makes to a physician, medical practice, or hospital with a residency training program. This provision derives from the Physician Payments Sunshine Act introduced by Senator Charles Grassley of Iowa, the ranking Republican on the Finance Committee.

The bill also includes several provisions that individual physicians and medical organizations strongly oppose.<sup>1</sup> One of these would make it more difficult for doctors to own or invest in a specialty hospital to which they refer patients. Another provision

that organized medicine is fighting would penalize specialists whose "resource use" is regarded as too high as compared with that of their peers. The measure would require the DHHS to distribute reports to doctors comparing their resource use with that of other practitioners with similar patients. Any physician whose use of tests and services is at or above the 90th percentile would face a reduction of 5% in Medicare fees. In defending the provision, Baucus said, "We've got to start going down this road and addressing overutilization." Senator Jon Kyl of Arizona, the Senate Republican whip and a senior member of the Finance Committee, countered, "This is, pure and simple, rationing."

Baucus, recognizing that Senate Majority Leader Harry Reid (D-NV) strongly opposes the inclusion of professional liability provisions in legislation on health care reform, sidestepped the matter by incorporating a resolution that expresses "a sense" of the Senate's views on medical malpractice. The nonbinding language states that reform "presents an opportunity" to consider the matter and urges Congress to "consider establishing a state demonstration program to evaluate alternatives to the current civil litigation system." However, the bill includes no provision that authorizes the creation of such a program or the funds to pay for it. With organized medicine focused on eliminating the 21% cut in Medicare's physicians' fees and other economic issues that would affect doctors, the Finance Committee felt little pressure to address malpractice issues — in part because such matters actually

come under the jurisdiction of the Senate Judiciary Committee.

Democrats nevertheless continue to search for savings to pay for reform, and the subject of malpractice is certain to resurface when reform legislation reaches the floor, largely because of a letter that CBO Director Douglas Elmendorf wrote to Senator Orrin Hatch (R-UT), chief sponsor of a malpractice bill, on October 9, 2009.<sup>2</sup> Referring to a new cost estimate, Elmendorf said the CBO had concluded that tort reform could reduce costs by approximately \$54 billion over a decade by lowering premiums for medical liability insurance and indirectly, by “reducing the use of diagnostic tests and other health care services when providers recommend those services principally to reduce their potential exposure to lawsuits.”

For months, Democrats have been able to neutralize the possibility that key stakeholders in the health care industry (physicians, hospitals, health plans, and employers) would rebel against reform, thanks to early deals the White House negotiated with some stakeholders to limit their vulnerability to disadvantageous effects of reform.<sup>3</sup> But as Baucus orchestrated trade-offs between committee members who took issue with some provisions and were also attuned to industry concerns, the agreements struck by the administration began to show signs of unraveling.

For example, when Senator

Snowe made an impassioned plea to the committee to set lower penalties for people who she said could not afford to purchase insurance, the committee reduced the penalties and also exempted some 2 million low-income persons from the mandate.<sup>4</sup> But by reducing the penalties and introducing the exemption, legislators made it more likely that younger people (who cost less to insure than older people) might opt to pay the penalty rather than purchase coverage. Should they do so, their premium dollars would not be available to subsidize the care of older, sicker people in a risk pool — a prospect that led AHIP to charge that the bill would lead to substantial increases in premiums paid by individuals and families. Citing a report<sup>5</sup> prepared by a consulting firm and paid for by AHIP, its chief executive officer, Karen Ignagni, said, “Between 2010 and 2019 the cumulative increases in the cost of a typical family policy under this reform proposal will be approximately \$20,700 more than it would be under the current system.”<sup>5</sup>

With virtually all Republicans strongly opposed to the Democratic reform bills, Obama faces one of the most challenging tasks of his young presidency in pulling together the disparate factions of his own party. Congressional Democrats remain divided over key elements of reform legislation, with the major stumbling blocks being the questions of whether to create

and how to pay for health care reform. The administration has already prepared a blended version of the two Senate bills and is heavily involved in Reid’s efforts to produce a compromise measure. A similar exercise is under way in the House under the leadership of Speaker Nancy Pelosi (D-CA).

The Finance Committee’s offering took on special importance because it represents the framework on which the administration hopes to build reform that can win broad Democratic support. Although many Democrats in the House and more than a few in the Senate find the bill far too conservative, when pressed by Obama, they may well agree not to let the perfect be the enemy of the (perhaps inadequate) good.

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