The Saga of Health Care Reform

DON LAVANTY

As the Congress struggled to enact Health Care Reform legislation, the process we witnessed requires some explanation because it was, in many ways, a historical lesson in legislative procedure.

First, we saw the U.S. House of Representatives whip itself into shape so that all committees of jurisdiction (the House Ways and Means, Energy and Commerce and Labor, Health and Human Services subcommittee of the Appropriations Committee) and the House leadership were on the same page. They did this without any support from the minority (Republican) party. In the House, a simple majority (218 votes) is needed to pass legislation and with 250 Democrats passing their version of the Health Care Reform legislation was completed by summer of 2009. The bill would have offered health care insurance coverage to all through a government plan; eliminated insurance denials for pre-existing conditions; required everyone and every employer to have health care coverage; reworked Medicare savings and taxes to pay for the coverage; and developed new health care information technology (IT) and workforce programs.

Enter the U. S. Senate, where in order to pass legislation (except for budget reconciliation), it is required that there be enough votes to shut off debate (i.e. prevent a filibuster); therefore the Democrats needed 60 votes for the bill to bring it up for a vote and avoid a filibuster. In the fall of 2009, the Senate began an effort to develop and pass its version of Health Care Reform and did not complete action until Christmas Eve of that year.

As passed, the Senate bill did not contain a government plan, (it had a private plan to cover those not insured), but did have a requirement for individuals and companies to purchase health insurance; a provision eliminating insurance coverage denials for pre-existing conditions; and, contained several Medicare and tax provisions to cover the cost of the program. Among those Medicare provisions were a "Productivity Adjustment" for laboratory services and a Laboratory Fee Schedule reduction of 1.75%.

In early January, a Conference Committee between the House and Senate began working out the differences in the two bills. A special election in Massachusetts (to fill Senator Kennedy's seat) was held and Scott Brown, a Republican, was elected. As a result, the Senate Democratic majority was now reduced to 59 votes (one less than required to shut off debate). Since no Republicans would vote to shut off debate, there was no way the Senate could bring back for a vote, whatever agreement that the Conference Committee reached.

The only option left was for the House to pass the Senate Bill. Many House members had problems with some of the Senate provisions and would not agree to the Senate bill as passed, unless changes were made. To make the changes the House desired, the Senate would have to pass them under the "Reconciliation' process which only requires a simple majority vote (51 votes) to approve.

In the meantime, President Obama convened a bi-partisan Summit to see if they could come to agreement on the two bills. The Republicans at the Summit said they could only agree if the current bills were put aside and the process started over. The President said he would take their suggestions, but to the already passed bills. After the Summit, we were back to the options of passing the Senate bill and using the reconciliation process to iron out the differences, starting over, or abandoning the effort. The House decided to "deem and pass" the Senate bill and then tackle the amendments that the House wanted to that bill. Those amendments were sent to the Senate, where Republicans tried to add additional amendments, and eventually passed by both houses of Congress.

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During this entire process, many opponents and other individuals have raised the issues – why did we need a 2000 page bill to achieve Health Care Reform and did that really make the process more difficult.

Notwithstanding the outcome of Health Care Reform, in order to achieve the results mentioned above, the U.S. Code on Labor Law (to deal with pre-existing conditions), the Public Health Care Law, the Medicare and Medicaid Statutes, and the U.S. Tax Code had to be amended.

Since the U. S. Code writers are not allowed to use judgment and discretion to make the changes passed by legislation, all bills that are passed must tell the Code writers exactly how to make the changes. Therefore in the Health Care Reform bills, a one word change in the Labor Code requires six pages in a bill to instruct the Code writers as to where to delete, where to add, and what new punctuation will apply. By the time you make all the Code changes to pass the Health Care Reform proposals, 2000 pages accumulate very fast.

As we have seen, the Saga of a reform effort of this magnitude is a major undertaking requiring great skill, patience and political and policy support.

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