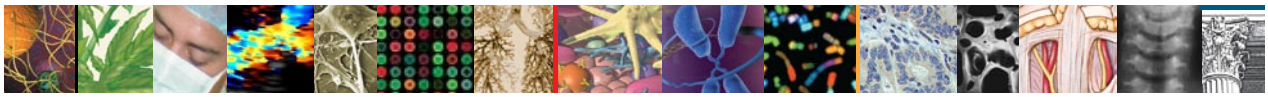

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Perspective

Forging Ahead — Embracing the "Reconciliation" Option for Reform

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The course of health care reform in 2009 resembled the silent movie series "The Perils of Pauline," in which each episode began with a threat to the heroine's life but ended with her salvation.

Despite repeated near-death experiences, reform legislation passed both houses of Congress. After so many obstacles had been surmounted, the remaining task of reconciling the House and Senate bills seemed doable.

Then, a political earthquake hit. Republican Scott Brown won the Massachusetts senatorial seat that had been held for 47 years by the late Senator Edward M. Kennedy, thwarting the capacity of the remaining 57 Democrats and two independents to bring anything to a vote in the Senate over the united opposition of the 41 Republicans. The election also caused something approaching a panic attack among White House and congressional Democrats, who called variously for dropping health care reform, trying to pass one scaled-back bill or several smaller bills, moving slowly on doing anything, seeking compromise with Republicans on some (unspecified) new approach, or having the House pass the Senate bill subject to modifications, which both houses would pass separately, to make the Senate bill acceptable to the House. Passing the fixes in the last of these options hinged on using "reconciliation," a procedure that requires only a majority vote but that can be used only to implement instructions contained in the budget resolution relating to taxes or expenditures. Passage of the modifications would follow House approval of the Senate-passed bill.

The idea of using reconciliation has raised concern among some supporters of health care reform. They fear that reform opponents would consider the use of reconciliation high-handed. But in fact Congress created reconciliation procedures to deal with precisely this sort of situation — its failure to implement provisions of the previous budget resolution. The 2009 budget resolution instructed both houses of Congress to enact health care reform. The House and the Senate have passed similar but not identical bills. Since both houses have acted but some work remains to be done to align the two bills, using reconciliation to implement the instructions in the budget resolution follows established congressional procedure.

Furthermore, coming from Republicans, objections to the use of reconciliation on procedural grounds seem more than a little insincere. A Republican president and a Republican Congress used reconciliation procedures in 2001 to enact tax cuts that were supported by fewer than 60 senators. The then-majority Republicans could use reconciliation only because they misrepresented the tax cuts as temporary although everyone understood they were intended to be permanent — but permanent cuts would have required the support of 60 senators, which they did not have.

The more substantive objection to the use of reconciliation for passing health care reform derives from the fact that, according to polls, more Americans oppose than support what they think is in the reform bills. It is hardly surprising that people are nervous about health care reform. Most Americans are insured and are reasonably satisfied with their coverage. In principle, large-scale reform could upset current arrangements.

If public perceptions of the intended and expected effects of the current bills were accurate, democratically elected representatives might be bound to heed the concerns. Because the perceptions are inaccurate, reform supporters have a duty to do a better job of explaining what health care reform will do. When participants in focus groups are informed about the bills' actual provisions, their views become much more positive. The prevailing views have clearly been shaped by opponents' misrepresentations of the reform plans, which supporters have done little to rebut. Opponents have described as a "government takeover" plans that would cause tens of millions of people to buy insurance from private companies. They have told people that a plan deemed by the Congressional Budget Office to be a deficit reducer is actually a budget buster. They have fostered the canard that end-of-life counseling would mean the creation of "death panels" (a claim that PolitiFact.com labeled "the lie of the year"). They have persuaded Americans that their insurance arrangements would be jeopardized by plans that would in fact leave most coverage untouched, add coverage for millions of Americans, and protect millions of others from cancellation of their coverage and from unaffordable rate increases in the event of serious illness.

Meanwhile, supporters have spent most of their time on seemingly endless debates with one another about specific legislative provisions — whether to include a public option in the reform legislation, whether to have a single national insurance exchange or separate state exchanges, how to enforce a mandate that everyone carry insurance and how much to spend on subsidies to make that mandate acceptable, how to enforce a mandate on all but small employers to sponsor and pay for basic coverage for their workers, and scores of other complex and bewildering technical provisions.

Health care reformers in the administration and Congress have a powerful case to make and, on an issue of such enormous importance, a duty to make it. In addition to reminding Americans that reform will protect, not jeopardize, coverage by preventing insurance companies from canceling coverage or jacking up premiums for the sick, reform advocates should remind them that the proposed legislation will bring coverage to tens of millions of currently uninsured Americans and protect it for scores of millions of others. Reform advocates should explain the legislation's legitimate promise of cost control and quality improvement.

President Barack Obama has announced a bipartisan meeting on moving the reform process forward. It is an opportunity for all sides to present ideas for improving the bills that already have been passed by both houses of Congress. If modifications are identified that will command the support of simple majorities in both houses, they should be adopted through reconciliation. Then the House should pass the Senate bill.

Other strategies, in my view, have no prospect of success. Abandoning the reform effort is the worst strategy of all — not only for reform advocates, but for the nation. Reform advocates are already on record as supporting reform. Voters who oppose reform will not forget that fact come November, and those who support it will find little reason to make campaign contributions to or turn out to vote for lawmakers who were afraid to use large congressional majorities to implement legislation that would begin long-overdue efforts to extend coverage, slow the growth of spending, and improve the quality of care.

The start-from-scratch and piecemeal-legislation strategies are invitations to time-consuming failure. The Senate would need 60-vote majorities for every component of such reforms. To be sure, lawmakers could craft a

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different bill that would extend coverage to fewer people than the current bills do. But they could not institute serious insurance market reforms without assuring a balanced enrollee pool — or assure such a pool without mandating coverage. Nor is it politically possible or ethically fair to mandate coverage without offering subsidies for low- and moderate-income people. And it is not possible to prevent those subsidies from increasing deficits without tax increases or spending cuts, which reform opponents won't support and which would require 60 Senate votes. The call to start anew is naive at best. At worst, it is a disingenuous siren song, luring health care reformers into a political swamp.

Reformers' best choice is to embrace the democratic process and attempt to persuade voters that the current legislation is in the national interest. They have 10 months to succeed before the midterm elections.

If would-be reformers retreat in the face of current public opinion polls, they will be sent packing in November. Arguably, they will deserve to lose. If they stand up for their genuinely constructive legislation, they can prevail — and will deserve to win.

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