



Obama could force governors' hands

Opt-out legislation would put health insurance issue squarely on their shoulders.

By **Jane Norman**

President Obama's support Monday for legislation that would let states opt out of the health law earlier than planned does not mean he is willing to compromise on the goal of making sure millions more Americans get health insurance, administration aides say.

If such a measure passed, the nation's governors would still be forced to deliver on the law's goals.

And that's why congressional Republicans don't see Obama's remarks to the National Governor's Association as progress. They don't see any change: The states would be implementing a law that GOP governors and lawmakers insist is a federal takeover of the health care system.

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Obama told the governors, who were in Washington for their winter meeting, that he backs a "reasonable" bill (S 248) sponsored by Democratic Sens. Ron Wyden of Oregon and Mary L. Landrieu of Louisiana and Republican Sen. Scott P. Brown of Massachusetts.

The measure would allow states to seek waivers from the law sooner than 2017, which is now the earliest date under which they can set up systems different from the federal approach. The waivers would be in effect for five years and could be renewed.

"I support it," Obama said of the senators' proposal. "It will give you flexibility more quickly, while still guaranteeing the American people reform."

After Obama's remarks, White House officials told reporters that the president is willing to be flexible on how the law's goals are met and open to states taking more of the lead on implementation.

Republican governors have been denouncing the law and its Medicaid expansion, though most have started to implement it. If the Senate bill were passed, they could be under increased pressure to detail workable alternatives and make them succeed.

Liberal and conservative health-advocacy groups do agree on one impact of the bill Obama is now endorsing: They see it as a way to bring about single-payer systems in the states.

Senior administration officials, speaking on background to reporters, praised the progress that states are making on implementation and said today's comments were a logical next step for Obama.

They denied that the administration is trying to provide states with a back-door way to get around the requirement that all Americans have insurance, and said they are merely trying to give states increased flexibility and innovation. The pitch to governors was in the same vein as the president's support for repeal of a tax-reporting requirement in the law and new thinking on medical malpractice, they said.

"It's something the president was intrigued by," an official said of the Wyden-Brown bill. "It's something that just made sense to come out and support now."

But Obama's announcement again showed the administration tacking to the center on the law — and its unpopular individual mandate, which is under attack in Congress and the courts.

The administration suggested in a fact sheet that states could throw out the requirement that Americans have health insurance, the linchpin of the law (PL 111-148, PL 111-152).

While the law includes a provision allowing states to opt out in 2017, the Senate bill would let them do that in 2014 when the individual mandate and other key provisions kick in. That would mean states that choose to pursue their own paths would never have to implement the overhaul.

The alternatives developed by states would still have to provide coverage that is as comprehensive and affordable as that available through the exchanges mandated by the law. And state plans could not increase the federal deficit. States would have to prove that the same number of residents would be covered as under the federal law.

It's possible that states could come up with a way to achieve the goals of the law without the individual mandate, a senior administration official said. The mandate is "a means to an end" and it's not yet clear how expanded coverage could be accomplished without it, the official said.

House Republican leaders said it wouldn't do much good to move up the date when the entire law is flawed. "Our commitment is to repealing Obamacare and to delivering an alternative that really focuses on cost first," said House Majority Leader Eric Cantor.

House Energy and Commerce Chairman Fred Upton, R-Mich., said the fact that states even have to be granted permission to seek waivers undermines the idea of flexibility. "A waiver program ensures governors remain under the thumb of unelected bureaucrats and it is highly improbable a state could receive a waiver without a massive expansion of Medicaid," Upton said in a statement.

And a spokesman for House Ways and Means Chairman Dave Camp, R-Mich., said that "changing the messenger doesn't change the message" and all the change would do is "deputize the states to carry out the same mandates that they don't want to enact in the first place."

Brown has characterized the bill as a "correction" to the health care law to ensure states are doing what's best for their specific situations, rather than a repeal of the law. "The legislation provides flexibility and says that a one-size-fits-all health care system doesn't fit the needs of every state," Brown said.

He said in an e-mailed statement that he "strongly" opposes the health care law and "believes states should have the ability to implement their own plans that provide quality care for all their citizens. He added that he is "pleased President Obama is joining his effort to give states the tools they need to innovate."

Brown's home state of Massachusetts already has enacted its own health care overhaul that covers nearly all the state's citizens.

Wyden said when he introduced the bill on Feb. 1 that he and Brown were looking for a way to encourage innovation by the states and promote choice and competition in health care. Wyden and Brown had first raised this idea in November 2010.

Wyden also pointed out that unless the date is moved up, states would be faced with setting up one health care system that would go into effect in 2014 but would have to devise a second system if they wanted a waiver in 2017.

"It is going to put us through a lot of bureaucratic water torture to try to figure out how to synchronize those

two dates,” said Wyden. “So it only makes sense to speed it all up and make it possible for everybody to get started in 2014.”

Wyden said the bill also would require the Department of Health and Human Services to begin reviewing state waiver applications within six months of enactment of the legislation. This would allow states to find out sooner whether their state waivers have been approved and would give them adequate time to roll out their state-specific plans, he said.

Obama told the governors he is “not open to refighting the battles of the last two years” over health care but he is “willing to work with anyone to make this law even better,” comments similar to those he made in his State of the Union address.

But some observers of the health policy scene saw a new route to a single-payer system. Michael Cannon of the conservative Cato Institute said that no state plan could begin to affect rising health costs in the Medicare and Medicaid programs.

“Therefore, the only way that states could cover as many people as ObamaCare does is by using ObamaCare’s tactic of forcing people to buy exorbitantly costly health insurance,” Cannon wrote in a blog post. “And if they’re not going to use an individual mandate, the only remaining option is a single-payer health care system.”

At the same time, the liberal-leaning Consumer Watchdog group agreed that the idea would essentially put single-payer back on the table. “Obama is giving those of us who favor a public insurance option to the private insurance market an opportunity to move our states forward,” said Jamie Court, president of the group.

And the three-member Vermont congressional delegation, which wants to bring single-payer to Vermont, hailed the endorsement. “At a time when 50 million Americans lack health insurance and when the cost of health care continues to soar, it is my strong hope that Vermont will lead the nation in a new direction through a Medicare-for-all, single-payer approach,” said Sen. Bernard Sanders, an independent.

According to the administration’s fact sheet, some proposals that could qualify for state waivers and still meet the intention of the law include:

- A system in which tax credits for small business are linked to tax credits for low-income families.
- “Alternatives to the individual responsibility provision” such as automatically enrolling people in health plans, as long as the same outcomes are achieved.
- Alternative plans that would “increase competition and provide consumers with additional choices.”
- Increases in the number of benefit levels that would provide more choices for individuals and businesses in the health plans they have to choose among.
- Allowing large businesses to immediately buy health insurance through the exchanges.

The administration also noted that states could submit a single application that includes Medicaid waiver requests that could, for example, allow people eligible for Medicaid to enroll in exchange plans.

Obama also plans to later this week issue a memorandum directing executive agencies to work with state and local governments to “reduce unnecessary regulatory and administrative burdens,” the administration said.

Jane Norman is associate editor of CQ HealthBeat.

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