



The tweak that could cost Mike Lee's vote and sink the healthcare bill

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When Sen. Ted Cruz, R-Texas, endorsed the latest draft of the Senate healthcare bill after it included a tweaked version of a proposal he had pushed, many observers expected his longtime ally and original co-author, Sen. Mike Lee, R-Utah, to quickly follow.

But Lee soon announced that he was undecided and that he needed more time to assess how the change – seemingly minor and technical but potentially significant – would affect insurance markets.

With Sens. Rand Paul, R-Ky., and Susan Collins, R-Maine, already coming out against advancing the healthcare bill, Senate Majority Leader Mitch McConnell can no longer afford to lose another vote as he needs at least 50 of 52 Republicans onboard. That means that if Lee can't get over his concerns in the coming days, it could sink the bill, regardless of what anybody else decides.

The issue, which various members of the healthcare industry have said makes the bill unworkable, arose as McConnell moved to integrate the Cruz amendment into the broader bill, the Better Care Reconciliation Act. The amendment allows insurers to offer less-expensive plans that don't have to comply with most of Obamacare's wide range of regulations as long as they also offer a plan that is fully compliant. Presumably, people who have more medical needs would purchase the plans that are more expensive and cover more medical care, but it would mean that healthier customers could buy plans that include less and also cost less.

In a new twist, the final version of the amendment leaves in place Obamacare's requirement for insurers in every state to have one single risk pool rather than one for sicker individuals and one for healthier individuals as had been originally envisioned. That means that as currently written, the Cruz proposal would be asking insurers to operate plans governed by two different regulatory regimes within a single risk pool. The novel idea comes with many complicated implications, has left even the most seasoned healthcare experts scratching their heads as they try to game out how this might work in the real world, and has left many inside the insurance industry uneasy.

The insurance industry hammered the amendment on Friday night. In a blistering letter to McConnell demanding its removal, America's Health Insurance Plans and Blue Cross Blue Shield Association wrote that the provision "is simply unworkable in any form and would undermine protections for those with pre-existing conditions, increase premiums and lead to widespread terminations of coverage for people currently enrolled in the individual market."

The American Academy of Actuaries released a paper Friday saying that creating a single risk pool is unworkable because insurers would have difficulty administering different sets of rules and premium rates for customers that are very different while keeping them in the same risk pool.

Cruz, like other conservatives, has previously said that he would like to see a bill that would do more to repeal Obamacare. When it became clear that more centrist Republicans wanted to keep some of Obamacare's provisions in place, he focused on changes to the bill that would offer insurance customers more choice in the plans they could buy and that would also reduce premiums.

"From his perspective in talking to experts, it's a significant reduction in premiums relative to Obamacare," an aide to Cruz said of his proposal.

Before the text became public, critics blasted the proposal, saying it would make coverage for people with pre-existing illnesses prohibitively expensive, even with funding that has been added to help insurers cover some costs. The effect would create an unbalanced risk pool, they said, with less money to spread around to help cover the costs of sicker customers. Sensitive that this criticism may cost moderate votes, Obamacare's single risk pool requirement was left in, but insurers said in their letter that this change will make little difference.

Meanwhile, conservatives concerned about the changes in the amendment, whose goal in discussions over the bill was to reduce premiums, worry that those whom they are aiming to relieve from higher costs would still end up subsidizing more expensive medical plans.

Lee had helped Cruz draft the earlier version of the proposal that allowed the market to form separate risk pools and indicated that the adoption of the amendment was necessary to win his vote. To him, it was the best available way of making sure that middle-income individuals who do not qualify for subsidies are paying less in premiums than they are under Obamacare. But with the change keeping the single risk pool rule intact, he's skeptical that it would still work.

"They made a pitch for the amendment and Sen. Lee was not convinced," an aide to Lee said.

Michael Cannon, director of health policy studies at the libertarian Cato Institute, said in a blog post that setting up a single risk pool would mean that fewer insurers would offer cheaper, non-compliant plans if any did at all. He reasoned that due to the the interaction of Obamacare regulations that would be left on the books, insurers could end up overcharging in the healthier market and undercharging in the sicker market. As premiums increase over time, fewer healthier individuals would choose to buy into those plans, eventually killing them.

The Congressional Budget Office score, which will project government savings and uninsurance rates, also may have an impact on Lee and on other senators, but it's unclear whether the amendment will be included in the score expected next week or whether it will be analyzed separately by another agency, such as the Department of Health and Human Services.

The American Academy of Actuaries paper noted, "Even if the compliant and noncompliant plans were pooled together for risk adjustment purposes, the potentially large differences in

underlying benefits between compliant and noncompliant coverage would make risk adjustment extremely difficult to implement."

For instance, a disproportionate number of people with Type 2 diabetes may opt to have a more robust plan that includes regular doctor visits and full coverage for prescriptions. A prescription that is widely used as treatment may become more expensive the following year, a move that would increase premiums. When deciding how much to charge its customers, a health insurance company would factor in the cost of prescriptions, but would have difficulty deciding how much to charge customers who are in a plan that doesn't include these medications, who bought cheaper plans to be shielded from such hikes.

Phil Kerpen, president of the free-market group American Commitment, sees the option differently. The risk pool definition, he said, would need to be spelled out through regulations from the Department of Health and Human Services, as it was under Obamacare.

"People can't make sense of it because it is indeterminate until HHS makes the definition," he said. "It really, I think, leaves the whole viability of the noncompliant plan entirely up to the ability of HHS to conduct this rulemaking in a way that is legally defensible and would create room for them to move independently."

HHS, he said, could continue to have an index rate on the entire pool but allow adjustments in cost based on health status.

"If they want to be more aggressive, they could say single risk pool refers to an accounting actuarial unification across these two different markets," he said, meaning that the rule could allow for market segmentation even if the single risk pool requirement isn't repealed.

The downside for advocates of the proposal, Kerpen said, is that the rule could be redefined under a Democratic administration, putting the noncompliant plans out of business.

Cruz himself has acknowledged that if his proposal became law, it would likely turn the Obamacare exchanges into high-risk pools, with the federal government helping to subsidize premiums to make them affordable. But that could be an acceptable tradeoff for conservatives who have long supported funding high-risk pools so that expensive pre-existing conditions can be paid for in a more targeted way without disrupting the rest of the insurance market and increasing premiums on the rest of the population.

Robert Laszewski, an insurance industry consultant, wrote in a blog post that whether the single risk pool regulation is kept in place is less important, because insurers would be able to work within the rules and find a way to carve up the market. He said conservatives "realize that they cannot overtly go back to the days of pre-existing underwriting and risk segmentation. Therefore, their aim is to turn the current individual market into the high-risk pool scheme they wouldn't be able to pass on its own."