



Compromise on health care reform legislation remains uncertain

President Obama has promised an open door to other ideas on health care reform, but the combative town hall meetings held during Congress' August recess still seem to have set the tone for this fall's health care debate on Capitol Hill.

By Elizabeth Galentine
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Health care reform watchers are focused on the Senate Finance Committee, which at press time was in the process of marking up "America's Health Future Act." The long-awaited legislation from Chairman Max Baucus (D-Mont.) promised to be bipartisan, but came out of the gate with no Republican support. That's not surprising, considering the anything-but-conciliatory summer.

In between the time it took South Carolina Representative Joe Wilson to shout "You lie!" to President Barack Obama during his health reform speech and when Speaker Nancy Pelosi was able to clear the look of shocked disdain from her face, multiple lawmakers gathered for the joint session of Congress likely experienced a flashback to their August recess.

Congress' annual month-long recess was a working vacation - and a stressful one at that. More than a few health care town halls across the country devolved from their intended Q&A sessions into shouting matches. Tom Schuetz, co-president of Iowa's Group Services, proposed that some of the frustration may have arisen from how the town hall meetings were run.

"Many of them are based on a predetermined bias and aren't designed to encourage a complete debate of the issues," he says. "They are designed to support a particular position and then are advertised as an open forum. I think this causes many of the problems."

Regardless, those events that were particularly contentious didn't help either side, says Bill Sweetnam, principal with Washington, D.C.'s, Groom Law Group. "They crowd out reasoned discussion about the legislation and push necessary parties away from the negotiation," he says.

Liberal lion lost

Just as footage from the town halls began to dwindle in late August, health reform advocates were dealt a devastating, if not unexpected, blow on August 25 with the death of Sen. Edward Kennedy, one of the strongest and most prominent supporters of reform. As chairman of the Health, Education, Labor and Pensions Committee, Kennedy (D-Mass.) was an outspoken

proponent of creating a new, government-run public plan. He had said that he "could not be prouder" when the HELP Committee passed the Affordable Health Choices Act with a "strong public option" on July 15.

One consequence of Kennedy's death is the loss of a leader who was able to achieve "moveable compromise," says Cyndy Nayer, president, Center for Health Value Innovation. Not only did he make increased access to health care his life's work, but he also had a gift for driving legislative consensus.

"He knew exactly how many people would be affected by a bill, the exact costs, and the incremental reach and cost by each amendment, each modification. No one else has assumed that role, therefore, his expertise and devotion will be sorely missed," Nayer adds. "Will health care reform move forward without him? I think, yes. Will it be palatable to most, or an even an amenable compromise? I have my doubts, but I hope that his message of accessibility and affordability resonates in the coming weeks."

Just hours after Kennedy succumbed to brain cancer, his friend and colleague Sen. Robert Byrd (D-W.Va.) asked that the final legislation bear Kennedy's name:

"In his honor and as a tribute to his commitment to his ideals, let us stop the shouting and name calling and have a civilized debate on health care reform which I hope, when legislation has been signed into law, will bear his name for his commitment to insuring the health of every American."

It remains to be seen if Byrd's wish will come to fruition, but Obama did invoke the third-longest serving senator's legacy in the closing moments of his speech to a joint session of Congress on Sept. 8. Referring to Kennedy's partnership with prominent Republicans to pass legislation such as children's health insurance and a Patient's Bill of Rights along with Kennedy's experience of having two children develop cancer, Obama said: "[T]hat concern and regard for the plight of others is not a partisan feeling. It's not a Republican or a Democratic feeling. It, too, is part of the American character - our ability to stand in other people's shoes; a recognition that we are all in this together, and when fortune turns against one of us, others are there to lend a helping hand."

Presidential push

In the days leading up to the president's speech, delivered just as Congress returned from its August recess, critics talked of Obama losing footing in the reform debate after the heated town hall meetings and comments from key Republicans suggesting they were backing away from the negotiating table. For months, pundits called for the president to put forth some firm details on his vision of health reform.

The fact that the president made the speech in the first place shows recognition of the need to lay out a stronger position on the issue and a realization that things may not be heading in his desired direction, says Adam Bruckman, president and CEO of Digital Insurance.

"Maybe there's an acknowledgement that things are off track a little bit and maybe he's losing the battle on health care reform," Bruckman says. "But, he's very good and very persuasive, and it'll be interesting to see if he's able to change the direction by addressing Congress."

While Obama attempted to instill a bipartisan atmosphere by referencing ideas put forth by his presidential campaign opponent John McCain (R-Ariz.) and promising to "bring the best ideas of both parties together," the partisan divide was evident each time the television cameras panned from Democrats giving a standing ovation to Republicans looking impassive and immobile in their seats - this is, until Wilson's outburst.

Obama did take a central position on the issue of a "pay or play" mandate for employers, notes Mike Thompson, principal with PricewaterhouseCoopers, when the president proposed it

apply only to larger employers. "Ninety-five percent of all small businesses, because of their size and narrow profit margin, would be exempt from these requirements," he notes.

The statement is "consistent with Obama's goal to build on what works - large employers appear to be in this to stay," says Thompson.

Mike Miele, president of actuarial consulting firm Healthcare Analytics, was pleased to hear "a lot more detail" from Obama; however he doesn't take at face value his continued refrain that those with employer-based insurance will be able to keep it - particularly with the public plan remaining on the table.

"Unless there's some kind of a provision in this law that says employers that are providing benefits have to do so, what's going to stop an employer from not covering people anymore and then pushing for the public option? That's really the fear that everybody has in the industry," says Miele.

Obama's oration skills worked to his advantage, Miele adds, but he remains skeptical that whatever legislation emerges will ultimately benefit all Americans.

"It's going to be a very interesting holiday season as this gets hammered out," says Miele. "We've been on pins and needles at our company because this is our livelihood, and there are a lot of people that are going to lose their jobs. It's a balancing act."

Will Finance find a way?

Whether a bill passes by the end of the year or not hinges largely on the final legislation to come out of the Finance Committee, says Erich Sternberg, president of AlwaysCare Benefits. However, there are many contentious issues to overcome. Baucus proposes taxing employee benefits worth more than \$8,000 for individuals and \$21,000 for family coverage. This is a concern if the cap will apply to all types of health insurance coverage, including vision, dental, HRAs, HSAs and FSAs, indicates John Hickman, health benefits attorney with Alston & Bird.

"If that broad position is taken, there will be a lot of unintended consequences that could impact or even eliminate what are very favorable and very good health care policy practices," he says.

With open enrollment season upon us, Sternberg believes all of the uncertainty is not likely to affect employers' decisions any more than last year.

"I'm not sure that anything has really changed from a year ago when open enrollments were affected by the economy," he says. "I think employers are still looking for the best value. They're thinking long and hard before they make changes, and they're doing everything they can to manage their costs. I'm not sure anything over the last 12 months has changed in that respect."