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A Public Option Compromise For Insurance Competition

Law360, New York (September 30, 2009) -- It is clear that President Obama is unwilling to lead the effort to push for Democrats to support his effort to make the health insurance marketplace more competitive with a single public option.

The recent votes in the Senate Finance Committee which shot down two amendments to add a public option to Chairman, Senator Max Baucus', D-Mont., bill is a clear demonstration of the difficult road ahead.

While not dead yet, in the interest of having an acceptable "Plan B" in our back pocket in the event that the public option is defeated, I propose an effective strategy used by President Nixon in 1973 when he authored and signed the HMO Act of 1973 (Yes, President Nixon).

By providing government funding to support the development of new competitive HMO models to the existing indemnity form of health insurance products, Nixon changed how health care is delivered.

Initially, premiums went down, health care cost increases slowed and the consumers changed how they accessed hospitals and physicians.

As soon as HMOs began to reduce costs and compete effectively with the major insurance companies, those companies bought their competition. The current companies, rather than compete with the new entrants, stifled competition. There are some lessons to be learned from this piece of legislation.

First, insurers do respond to true competition. Second, there are always better financing ideas that will not get started unless they have government support. Third, government programs are a good way to test the marketplace. Finally, it is important to be certain that government will protect free markets from insurance companies reducing or eliminating competition.

Using the HMO example, I propose that the Senate leadership use a compromise of some government funding and the private sector rather than a single government option to develop new models of financing health care delivery.

My proposal would include (1) demonstration grants to test new financing approaches, (2) loans for start-up businesses and (3) reinsurance to enable start up companies to assume low levels of risk.

This approach will encourage the entrepreneurial spirit of the business community and will enable new entrants into the marketplace to get over the real barriers to entry into the insurance markets — raising the necessary capital and obtaining reinsurance protection.

While the insurance industry claims that the proposed public option is an unfair competitor, my proposal should be viewed as a laboratory for testing new insurance products which — as in the HMO example — the insurance industry could adopt.

The public option is easier to implement, but there is a risk. That is, are we certain that the “Medicare for all” model is the right approach given its enormous unfunded liability? Why not use the next couple of years to develop new approaches to financing health care services and let the marketplace figure it out?

History has shown that what the insurance industry is really afraid of is not a government competition, but more effective free market competitors. Let’s give the insurance companies what they are asking for — new marketplace competitors.

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