

**The Role of the Public Health Insurance Option in the
Health Care Reform Debate of 2009-2010**

An Honors Thesis for the Department of American Studies

Paul W. Kohnstamm

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ABSTRACT

A successful legislative strategy for passing a comprehensive health care reform bill had eluded American presidents for generations. Each reform effort had its own unique challenges, and the conventional wisdom among observers is that the public option debate was yet another obstacle that President Barack Obama had to overcome in his quest for health care reform. The public option is a proposal to create a government-run insurance plan to compete with private health insurers. While the public option did pose certain challenges to achieving health reform—such as creating an ideological gulf between liberals and conservatives and driving moderates away from the negotiating table—I argue the policy had a net positive effect on the effort to pass the most comprehensive health care bill possible. The public option was able to be negotiated away for significant policy achievements that arguably impact more Americans than the public option that was ultimately debated by Congress. Further, the public option was used as a bargaining chip with stakeholders to negotiate for the financing of health reform and crucial political support for the bill. Lastly, the public option was a popular policy proposal that acted as a lightning rod in absorbing conservative attacks that would have otherwise been directed at less popular—yet more essential—provisions of the bill, such as the individual mandate. In this sense, the public option preserved comprehensive health care reform, and the basic structure of the Affordable Care Act.

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Introduction

HOW WE GOT HERE

Public policy making is a living process. Any successful policy prescription is mindful of the political and historical context—previous attempts at solving a problem, failures, and successes all must be taken into account. The public health insurance option is no different. First outlined broadly in 2001 by political scientist Jacob Hacker, the proposal tacitly acknowledges the past failures and successes in achieving the goal of affordable, accessible coverage for all Americans.¹ In other words, in a 2001 context, no one—at least with a realistic desire to see their plan become reality—would propose a plan that is seen outside the realm of political mainstream. Examples in the current context would include entire, *immediate* destruction of the private insurance industry or entirely dismantling Medicare. Simply put, the time for those debates had past and the country was not considering either of those policy ideas at the moment. Therefore, in order to fully understand the thinking and context of the public option proposal, we must explore how the American health care debate got to that point.

The story begins in the 1930s when President Franklin Delano Roosevelt was in the midst of remaking America during the productive first one-hundred days of his administration. The country was in some of the worst days of the Great Depression and Roosevelt had an opportunity to push through drastic policy solutions as a result of the dire economic times. Committed New Deal liberals thought this would be the perfect opportunity to establish universal health care

¹ Hacker, Jacob, S. "Medicare Plus: Increasing Health Coverage by Expanding Medicare." *Economic and Social Research Institute*. 2001. Print.

through a national, compulsory health insurance plan—in a proposal that has come to be known in economics and policy circles as “single payer.” If there was a time when the country would be willing to overlook its hesitations for greater government involvement, this was the time. Americans were feeling vulnerable and in need of protection from their government, the same environment that allowed for the passage of Social Security. David Blumenthal and James Morone commented in their comprehensive narrative on presidential health politics, *The Heart of Power*, that in Roosevelt’s failure to push through national health insurance during the New Deal “lies one of the great mysteries in the history of American health care policy.”² That is not to say there were no interests against a governmentally sponsored national health plan. The American Medical Association (AMA) was deeply engaged and actively opposed plans to include health insurance in Social Security. When Roosevelt’s “Committee on Economic Security” published a report considering a national health plan, the AMA led the opposition effort, organizing protest letters, telegrams and editorials criticizing the President.³ Roosevelt never really made the push for a national health reform, and even reassured physicians in 1936 that the federal government would only “contemplate action in [doctor’s] interest.”⁴ Roosevelt’s long tenure as President produced three rounds of commissions and vague plans, 1934-35, 1938-39, and 1944-45, each of which failed to push any legislation through Congress. However, the lasting legacy of the era is the determination of New Deal-influenced liberals to reach the goal of national single payer. They would passionately pursue it for the next thirty years and many still do so today.”⁵

² Blumenthal, David, and James Morone. *The Heart of Power: Health and Politics in the Oval Office*. Los Angeles: University of California Press, 2009. Print. 23

³ Blumenthal and Morone, 36.

⁴ Blumenthal and Morone, 40.

⁵ Blumenthal and Morone, 15.

When President Harry Truman succeeded President Roosevelt, FDR was in the midst of his third look at national health insurance reform. Truman was deeply passionate about the issue and he later called his failure to enact a national government plan his “biggest disappointment.”⁶ More than Roosevelt, Truman embodied the passion that drove the long push for an active government role in health security. However, Truman would encounter familiar political challenges in passing an ambitious health plan through the United States Congress. The AMA mounted an aggressive public relations campaign against Truman’s legislation and Truman failed to use his bully pulpit to arouse public support for national health care. The political realities were even starker. Republicans and Conservative Democrats were staunchly against government-run health care—or any extension of what they saw as overreaching New Deal programs—and Truman’s legislation was dead on arrival.⁷

By the Eisenhower Administration in the 1950s, the Democratic left’s vision for universal government run health care had been clearly established, and the Republicans needed an alternative proposal to solve the issue. Eisenhower and conservatives knew that they could not beat the Democrats with nothing to counter the liberal’s proposals. The conservative solution became known as the “American Way,” or as Blumenthal and Morone put it, “public policies operating through private institutions.”⁸ Eisenhower was successful in cementing the employer-sponsored health insurance model by eliminating the income tax on employer-based premiums—thereby creating an incentive to provide health insurance as a substitute for higher (taxable) wages.⁹

⁶ Blumenthal and Morone, 58.

⁷ Blumenthal and Morone, 73.

⁸ Blumenthal and Morone, 16.

⁹ Blumenthal and Morone, 16.

The health care debate in America tends to swing back and forth like a pendulum between two ideological “poles.” On one end is full shared risk under one national health plan, and the other is pure unrestrained markets where each person fends for him or herself. New Dealers were still determined to win their vision of collective security in the Social Security mold. The thinking was, if they could not get the whole thing, they should at least chip away at a national health care plan. Lyndon Johnson—whose skills and techniques in effectively managing the levers of Congress are well documented—was the most successful of the Presidents who have tried to push health care reform through Congress. He was able to use his landslide election in 1964 to gather enough political capital to pass Medicare coverage for the elderly. Johnson was also able to convince enough Conservative Democrats that if they were not going to go for insuring everyone, they should at least support insuring America’s poorest and most vulnerable citizens, through Medicaid. Medicare and Medicaid were major victories for the vision of collective security, and liberal reformers hoped they would set a precedent for future policies. For example, according to Senator Edward Kennedy’s (D-MA) chief policy aide, Stan Jones, the trajectory was looking promising. “Medicare was the first step...and the next step [was] coming,” Jones said upon the passage of Medicare.¹⁰ To the chagrin of universal national health care hopefuls, Medicare turned out to be the peak of the Social Security vision first formed in the 1930s.¹¹

As Vice President under Eisenhower, Richard Nixon was involved in shaping the Republican vision for health care policy. Upon finally assuming the Presidency in 1968, he was determined to put health care policy back on the “Republican” track. Nixon proposed an employer mandate that would force employers to provide health insurance coverage to their

¹⁰ Blumenthal and Morone, 224.

¹¹ Blumenthal and Morone, 17.

employees.¹² Nixon was the first Republican president to embrace the idea that all Americans should have health insurance, but he dismissed the liberal notion that America should eliminate the entire private health insurance system simply as a means to cover the minority of Americans who did not have insurance.”¹³ This argument, namely that the federal government should not risk dismantling the current system of private insurance to benefit the uninsured, would reappear in the public option debate.

While his plan was passed out of the Ways and Means Committee in the House, Nixon was not able to gather enough votes and support to pass his employer mandate amid the chaos of the Watergate scandal.¹⁴ However, the Nixon health care vision was the first to introduce the strategy of bringing costs down through the market solution of Health Maintenance Organizations (HMOs).¹⁶ For a President that did not actually accomplish much in terms of passing health care legislation, Nixon had a lasting impact on the health care debate. On one hand, he was successful in elimination a national single-payer plan for all Americans from the realm of political possibility. There would never be another President, or even a major party nominee, to propose a “Medicare-for-all” style health plan.¹⁷ However, Nixon also showed a commitment to extending access to insurance to all Americans through a mix of private means, government inducement (tax breaks), and *regulations and mandates*. Forcing employers to “pay or play”—meaning play by providing health care coverage or pay by contributing to a national

¹² Blumenthal and Morone, 17.

¹³ Blumenthal and Morone, 17.

¹⁴ Blumenthal and Morone, 247.

¹⁵ The Watergate scandal refers to the political scandal derived from the break-in of the Democratic National Committee headquarters in the Watergate Office Complex by individuals connected to President Nixon’s re-election campaign. The scandal resulted in the resignation of President Nixon and the indictment, trial, and conviction of multiple Nixon Administration officials.

¹⁶ Blumenthal and Morone, 17.

¹⁷ Blumenthal and Morone, 17.

pool that would go towards achieving expanded coverage—became the models for the two Democratic president’s health care efforts (Clinton and Carter) between Nixon and Obama.¹⁸

Republicans, having rejected what they saw as the big government side of Nixon’s health plan, instead decided to build on his proposed market solutions. Presidents Ronald Reagan, George H.W. Bush, and George W. Bush all aimed to solve the problems of high health care cost and restricted access by promoting free markets. However, as Reagan found out when he tried to drastically cut back Social Security, the New Deal era entitlement programs were extremely popular. Reagan’s approval dropped 16 points this proposal for Social Security cutbacks.¹⁹ If Republicans could not remove the “sins” of big government programs like Medicare and Social Security, they would instead try to remake them in the conservative image. George W. Bush introduced Medicare Advantage as a vehicle to have private plans compete with the government’s insurance. For the first time, seniors would be able to purchase private insurance plans instead of traditional Medicare. The Medicare Part D prescription drug benefit was also established using private insurers instead of the federal government. Furthermore, HMOs became the norm to try and bring down costs. Individuals were offered Health Savings Accounts so they could take control over their own health care decisions—and dollars. The Republicans move to the markets did not come without political compromises from their end. Presidents Reagan and George W. Bush presided over the two largest expansions of Medicare benefits. Reagan also instituted catastrophic health coverage for the elderly.²⁰

In the 2008 presidential campaign, the Republican principles were clear. Make coverage affordable through genuine market competition and give individuals control over their health

¹⁸ Blumenthal and Morone, 356.

¹⁹ Blumenthal and Morone, 19.

²⁰ Blumenthal and Morone, 19.

care. Republican nominee Senator John McCain advocated revoking the Eisenhower tax breaks for employer sponsored premiums and giving individuals their own tax credits to purchase insurance on the open market. If people wanted a skimpy health plan they could buy that, or if they preferred the most generous benefits they could buy that too.²¹ Under this system, Republicans argued, true competition and choice could exist, without interference from the government or employers.²²

Democrats opposed this turn to the markets and the rejection of a social safety net with shared risk. However, the single payer ideal had long faded with the New Deal coalition and the rise of the conservative right. Democrats knew the American public was unhappy with the state of health care in America; the question was what to do about it upon reclaiming the White House, and with huge majorities in both chambers of Congress. One thing was clear: the unrestrained turn to the markets had failed to control costs and stories of people being denied coverage due to pre-existing conditions and lifetime caps, or forced into medical bankruptcy, highlighted the importance of insurance company regulation. Health *insurance* reform became the Democratic mantra, as they stressed the need to regulate insurance companies and reign in their abuses. This is in contrast with *health care* reform which suggests a systemic change of American health care.

²¹ Critics of the McCain plan pointed to the fact that an unsustainable adverse selection problem would surely result. In other words, armed with fresh tax credits, the sickest individuals would want to purchase the most generous health plans, and the healthiest would sign up for the least costly plans. The result would violate the essential rule for insurance markets to function—that is a wide pool of healthy people subsidizing the few sick. The same criticism exists for the new state-based health insurance created by the new health care law.

²² Blumenthal and Morone, 19.

Then came the question of expanding access to the 46 million Americans without health insurance.²³ Democrats advocated subsidies to help people afford insurance coverage and to create accessible insurance exchange marketplaces where individuals left out of the employer-based system could pool together to purchase coverage. This is essentially the model of the bipartisan Massachusetts health reform law of 2006, signed into law by Republican Governor Mitt Romney.²⁴ Plans for private insurance regulation and subsidies for accessible options through exchanges were great starts, many Democrats argued, but did not go far enough towards guaranteeing affordable coverage. The only way to reach that goal would be to offer a public health insurance option to compete with the private plans on the exchanges.²⁵

The public option reflected both history and political compromise. Hacker, who is well versed in the history of health reform politics, believed that the public option was a suitable, middle of the road approach. History showed the political environment would not prove receptive to a national single payer approach, but he believed that Americans were growing wary of insurance companies and unrestrained markets as their only options. The public option would bridge the ideological gulf that stretched from Truman to George W. Bush. The government plan would be there as a fallback guaranteeing coverage if the insurance companies were not performing well and keeping premiums affordable. Furthermore, proponents argued, the Nixonian pledge to not disrupt the entire private health insurance system for the sake of a minority of individuals who fell through the cracks would be upheld. Hacker, in his 2007 briefing paper, called the public option “politically realistic and consistent with American

²³ Newport, Frank, and Elizabeth Mendes. "About One in Six Adults are Without Health Insurance." *Gallup*. 22 Jul 2009 . Web. 2 May 2011.

²⁴ Knox , Richard . "Romney's Mission: Massachusetts Health Care." *NPR*. 08 Apr 2006. Web. 2 May 2011

²⁵ Hacker J. 2008. The Case for Public Plan Choice in Health Reform. Washington DC: Institute for America’s Future Policy Brief.

values.”²⁶ In reality, the public option—in its originally designed form—would have ushered in a major change in the American health care system. For the first time in American history, healthy, financially independent, non-elderly Americans would be able to choose to purchase insurance directly from the government. In the pendulum of health care policy in America, the question was whether Americans had swung so far towards pure unrestrained markets that they were willing to respond by injecting government into direct competition with private insurers for every American.

THE PUBLIC OPTION IN THE HEALTH REFORM DEBATE

When President Obama launched the legislative process of health care reform in March 2009 at a bipartisan health summit held at the White House, it was already clear the public option would be at the center of the debate. Ahead of the otherwise cooperative summit, Congressional Republican leaders released statements opposing the public plan specifically.²⁷

The public option became central to the larger health reform debate primarily because it fit easily into the ideological camps that were formed from in the last 70 years. To what extent should the government be involved in the delivery of health care in America? On one side of the ideological divide, public option advocates were in favor of more government involvement to control private sector abuses and limit perceived market inefficiencies. On the other side, public option critics decried any increased government role and used the public option as a vehicle for labeling the entire reform effort as a government takeover of health care. Despite the

²⁶ Hacker, Jacob S. “Health Care for America.” *Economic Policy Institute*. 11 Jan 2007.

²⁷ “Obama Holds Health Summit at White House.” *PBS*. 05 Mar 2009 . Web. 2 May 2011.

complexities of the specific policy proposals, one thing was indisputable about the public option—no matter its size and shape: the government would be *more* involved in the delivery of health insurance than it was currently. The ideological terms of battle were outlined clearly, and at many times the debate seemed to be entirely focused on whether a public option would be included in health reform—and what form the plan would assume.

The purpose of this thesis is not to evaluate the arguments for or against a public insurance plan or even the merits of the health reform efforts as a whole. Rather, I seek to determine what role the public option played in the larger year-long debate. Instead of adding to the literature arguing for or against this policy proposal, I attempt to add an objective analysis of the impact the proposal had on the legislative process and outcome. Upon initial glance, it may appear to observers that the public option was a thorn in side of the Obama Administration, which was attempting to pass what it viewed as a large scale reform effort that encompassed much more than the public option. Further, the inclusion of the public option seemed to squelch any chance of gaining bipartisan support for the health reform bill as a whole. Furthermore, since the public option never had the votes in the U.S. Senate to overcome a Republican filibuster, one might argue the entire public option debate was an exercise in ideological banter.

While the public option certainly was the cause of some consternation among those attempting to pass health care reform, I argue it served a tangible and strategic legislative role in passing the most comprehensive reform bill—as defined by expanding insurance access, lowering costs, and reigning in private insurance company abuses—that could be achieved under the political circumstances. The public option served as useful legislative bargaining chip when negotiating with stakeholders behind closed doors. For the Obama Administration and Democratic members of Congress, the public option could be used to ensure cooperation on less

controversial aspects of reform, such as coverage of pre-existing conditions (guaranteed issue) and financial concessions such as an \$80 billion pledge in cost savings from pharmaceutical companies. Additionally, the public option served as a rallying cry for those most dedicated to seeing health reform pass. The moderate Democrats that were on the fence about the public option usually were not the ones that were championing the health reform cause. Finally—and perhaps most importantly—the public option diverted the focus of the conservative base (and some liberals) away from attacks on other controversial provisions in the health care bill, such as the individual mandate or health insurance subsidies to the working class.

The public option was not devised as a secret ruse with these indirect legislative benefits in mind. Rather, the public option is a serious health care reform proposal that advocates truly believe could dramatically improve health care in America. But, as I will highlight, when trying to pass something as large as the health care bill through the United States Congress, policy ideals often defer to political realities—and this manuscript will serve as a case study for that reality.

Before turning to the legislative and political role of the public option, I will explain the policy behind the proposal, and the arguments for and against the various plans. The term “public option” needs to be defined, so the reader understands the distinct public option proposals—often thrown under a single umbrella—can range from ones that would dramatically alter the shape of the health care system in America to those that would affect just a few million people. Next, I will examine the legislative process and the role of the public option as the proposal moved from academic think tanks to Congress and the White House. I will also examine the intersection of stakeholders’ interests (hospitals, doctors, drug companies, and insurance companies) and the public option. Finally, I will explore the way in which the public

option influenced the larger debate from a communications and public opinion perspective. This will include analysis of the messaging used by both proponents and opponents of the public option and how these messages moved public opinion on the proposal.

METHODOLOGY

The findings of this thesis are based on a review of the relevant policy papers relating to the public option. I examined the scholarly articles that resulted in the creation of the public option, as well as those that argue against the policy—or for a modified version. I also conducted interviews with key figures involved in the policy formulation of the proposal. The legislative process section was derived mostly from two sources: First, retrospective accounts from those involved in the process, as well as the journalists covering the health care debate and the White House. Second, I used daily news articles and blog postings. Interviews with those involved in closed-door stakeholder negotiations were integrated. For the media and public opinion section, I utilized public opinion polling and analyzed broadcast media transcripts.

Part 1: The Policy Shop

THE BUILDING BLOCKS OF THE PUBLIC OPTION

The public health insurance option did not originate in congressional committee, but rather in the more isolated universe of academia and think tanks. The public option in its most basic form was born in 2001, in an article by Jacob Hacker, titled “Medicare Plus.”²⁸ The 2001 proposal is so vast and sweeping it serves merely as a starting point from which more politically realistic proposals would emerge. Hacker is a political scientist first and foremost, and attempts to build in political realities into his work. His 2001 proposal, he acknowledged, “defied all reasonable standards of political feasibility.”²⁹ Hacker envisioned the role of the paper, which was written mostly while completing his doctorate in Political Science at Yale, as injecting the proposal into the policy discourse. Hacker notes in 2001, “if the past is prelude to the future, the next big tide of health policy ferment is set to toll into Washington sometime near the end of the decade.”³⁰ Hacker could not have been more on target with the timing of his prediction.

From a policy perspective, the 2001 “Medicare Plus” paper outlines broad principles, which are the underlying basic elements of any public option plan. Hacker viewed Medicare as a successful, popular program that should be built upon, a position that put Hacker in line with the single payer advocates who clearly wanted more government involvement in the American

²⁸ Hacker, “Medicare Plus: Increasing Health Coverage by Expanding Medicare.”

²⁹ Ibid, 98.

³⁰ Ibid, 98.

health care system. The public option is an attempted political compromise between the national single payer position and the position of unregulated, market-based private health insurance.

The stated goal of the plan is to offer quality, affordable, and accessible health care for every American—the principle which became the Democratic talking point in the legislative battle nearly a decade later.³¹ To meet these objectives, Hacker argues for a plan with three key components. First, all Americans not covered by Medicare or employer sponsored health insurance (ESHI) would buy into an expanded Medicare-like public plan. Existing Medicaid and State Children’s Health Insurance Program (SCHIP) participants would be rolled into the new plan. Second, employers would be forced to sponsor coverage “at least as generous as that available under Medicare-Plus” or to pay into their employee’s coverage in Medicare-Plus. This idea is called a “pay or play” employer mandate. Third, a phased in individual mandate would be instituted, with all Americans being required to obtain health insurance coverage or face a penalty.³²

Hacker envisioned this form of the public option would garner 50-70% of the non-elderly population, a figure that would cause alarm to those opposed to single payer. Critics of governmental involvement in health insurance already derided the unfair market power of the 13% of Americans that were on public health insurance programs at the time.³³ This market power is derived from the federal government’s bargaining leverage in negotiating lower provider reimbursement rates than the segmented private insurance plans. Hacker includes some candid thinking in his 2001 brief that he did not include in his more politically fine-tuned proposals of 2007 and 2008. He argues that the “widely held notion that displacement of ESHI

³¹ Ibid, 77.

³² Ibid, 78.

³³ Ibid, 90-91.

should be avoided at all costs is fundamentally at odds with good public policy...A large public plan should be embraced not avoided.”³⁴

Following Congressional Democrats’ return to power in the 2006 midterm elections, Hacker sensed the time was coming for another large-scale health care debate. He knew, however, that he needed a policy framework that could be included, at least nominally, in the Democratic presidential candidates’ health care platforms. In 2007, he drafted a proposal called “Health Care for America,” that mirrored closely his 2001 proposal, yet refined some of the political rhetoric. Although the substance of the plan was largely the same, he included new political talking points, such as “Health Care for America is not single payer” and argued that the plan “builds on the best aspects of workplace insurance while filling the gaps.”³⁵ Gone were the “off-message” philosophical arguments of not worrying about the shift of coverage from private to public health insurance.

The substance of Hacker’s arguments remained mainly the same. Hacker envisioned the new public plan would “team up with Medicare to bargain for lower prices and upgrade the quality of care.”³⁶ For advocates of what became known as a so-called “robust” public option, this piggybacking on Medicare to use as leverage for lower payments to providers was the key element of expanded public health insurance. The argument was that Medicare and the new, large, public plan would have leverage—due to their extraordinarily high enrollment numbers—to negotiate low rates with providers. If Medicare, with its fraction of enrollees compared to the forecasted new public plan, could negotiate low rates, imagine what the new public plan and

³⁴ Ibid, 91.

³⁵ Hacker, “Health Care for America,” 4.

³⁶ Hacker, “Health Care for America,” 2.

Medicare *combined* could do, proponents forwarded. The critics, on the other hand, argued that the low Medicare payment rates were the problem, not the solution.³⁷

The *Commonwealth Fund's* 2008 “Building Blocks” proposal mirrors the Hacker plan, with “Medicare-Plus” simply relabeled as “Medicare-Extra.”³⁸ The “Building Blocks” proposal is perhaps most noteworthy for taking the idea of a public health insurance plan and placing it in a “connector” where individuals can choose between the public plan and multiple private alternatives. A health insurance connector, or “exchange” as they became known in the legislative debate, is essentially an insurance clearinghouse where all the choices are offered to individuals—in theory, promoting healthy competition between plans. The connector concept was instituted in the Massachusetts health care reform bill of 2006, although no public plan is offered in competition with the private plans available on the Massachusetts connector. This notion of direct competition in an exchange clearinghouse—rather than two large distinct pools of private and public plans, as Hacker had envisioned with Medicare-Plus—became a commonality of all public option proposals moving forward.

Senator Barack Obama’s (D-IL) presidential campaign ran on a health platform that included vague policy outlines of a national health insurance exchange with “any American having the opportunity to enroll in a new public plan or an approved private plan.”³⁹ Following the election of President Obama and even larger Democratic majorities in Congress, it was clear major health reform—and with it the public option—would be considered in the following

³⁷ Cannon, Michael F. “Fannie Med? Why a ‘Public Option’ is Hazardous to Your Health.” *Cato Institute*. 6 Aug 2009. Web. 27 Oct 2010

³⁸ C. Schoen, K. Davis, and S. R. Collins, Building Blocks for Reform: Achieving Universal Coverage with Private and Public Group Health Insurance, *Health Affairs*, May/June 2008 27(3):646–57

³⁹ Obama for America, “BARACK OBAMA AND JOE BIDEN’S PLAN TO LOWER HEALTH CARE COSTS AND ENSURE AFFORDABLE, ACCESSIBLE HEALTH COVERAGE FOR ALL.” <http://www.barackobama.com/pdf/issues/HealthCareFullPlan.pdf>

Congressional session. It was clear a chief question in the debate would be whether or not to include public plan choice in the new exchanges. Other important policy disagreements emerged in discussions of the details of the plan. If a public plan were created, how would it be structured? How would it pay providers—on Medicare rates, private rates, or somewhere in between? Who would be eligible to enroll in the public plan? Who would administer the public plan? Would it be possible to create a level playing field between the public and private plans? What if the public plan was *too* successful in taking away customers from private health insurance, or failed because of attracting sicker than average enrollees? These were the questions that would drive the policy debate among academics and health policy experts.

THE THREE-HEADED PUBLIC OPTION POLICY DEBATE

The scholarly literature that emerged surrounding the public option from late 2008 leading up to the start of the congressional debate in the summer of 2009 falls into three distinct categories. The payment structure of the plan is the dividing line between the different types of public options. On one end, there are the advocates for the robust public option—a public plan that uses high enrollee purchasing power to lower systemic health care costs. These include, Hacker as well others from liberal think tanks, such as *The Urban Institute*'s Robert Berenson, John Halohan, Stephen Zuckerman and Linda Blumberg. Promoters of the robust plan believe

the public option must link provider payment levels to Medicare's rates and be open to anyone that wishes to enroll.⁴⁰

The second strand of literature that emerged was from experts I will label public option “moderates.” These individuals, notably Len Nichols and John Bertko from *The New America Foundation* argue that the public option should not be used as mainly as a vehicle for cost control by linking the public plan's payment rates to Medicare's. These policy moderates argue that there is a strong mistrust of private insurance companies that is the driving political force behind the desire for the public plan choice—and that the moderate public option would please both the people who are simply against any private health insurance, yet be structured in a way that would ease the angst of critics that worry the public plan would lead to the downfall of the entire private health insurance system.⁴¹

The third strand of literature argues against a public option in any form. The central arguments, mainly from conservatives like Robert Moffit and Stuart Butler at *The Heritage Foundation* and libertarians like Michael Cannon at *The Cato Institute*, are that the robust public option is a “Trojan horse” for single payer and that its implementation would surely spell doom for private health insurance in the long run. The conservatives are also against the moderate public option proposals as they believe that a public plan would have certain inherent advantages because of its status as governmentally-administered.

⁴⁰ Berenson, Robert, John Holahan and Stephen Zuckerman. “Getting to a Public Option that Contains Costs: Negotiations, Opt-Outs, and Triggers.” *The Urban Institute*. Nov 2009. Web. 27 Oct 2010.

⁴¹ Nichols, Len M. and John M. Bertko. “A Modest Proposal for a Competing Public Health Plan.” *The New America Foundation*. Mar 2009. Web. 27 Oct 2010.

A METHOD FOR COST CONTROL: Arguments for the Robust Public Option

While there are important differences between public plans that would be set up as a stand-alone competing pool (as Hacker envisioned) and a public plan that would be included among all others in a single health insurance exchange (*Commonwealth Fund*; Congressional proposals), the *sine qua non* for the advocates of a robust public option is the linking of payment rates to those used under Medicare. Proponents of this approach support the notion that public insurance is superior to private insurance at controlling costs and increasing coverage. The advantages of public insurance stem mostly from bargaining power derived from large enrollment numbers. A large public plan, such as Medicare, is able to have relatively low administrative costs, and negotiate lower reimbursement rates than private insurance for provider services and for prescription drugs. Furthermore, public plans are not-for-profit.

Medicare's administrative overhead costs are around 2-3% of premiums, while large-plan ESHI is higher, at between 5-10% of premiums. However, the administrative costs grow significantly for individuals who fall outside of large groups such as Medicare or a huge private ESHI plans such as that for a company like IBM. In the small group market, 25-27% of premiums are used for administrative costs, while in the individual market, around 40% of premiums are used for administrative costs.⁴² Large public plan backers argue that if you could enroll the small group and individual purchasers in a large pool—such as a new Medicare-like public plan— these higher administrative percentages would instead mirror the single digit percentage of premiums that occur in Medicare and large plan ESHI. For example, the

⁴² Hacker, Jacob S. "The Case for Public Plan Choice in National Health Reform." *Institute for America's Future*. 2008. Web. 4 May 2011. 5.

Congressional Budget Office (the non-partisan economic analyst wing of Congress) found in 2006 that Medicare plans spend “2% of expenditures on administrative costs,” while the alternative “private Medicare Advantage plans spend approximately 11%...despite operating under similar rules and treating the same population.”⁴³ Furthermore, the regulated clearinghouse of private plans offered through an exchange to federal employees—known as the Federal Employee Health Benefit (FEHBP) plan—spends between 7-12% of premiums on administrative costs.⁴⁴

Proponents of the robust public option argue that Medicare is best at holding down costs through bargaining power. Small insurers lack the bargaining power with providers and thus cannot keep premiums as low as larger firms.⁴⁵ In other words, small insurance plans do not hold the negotiating power when debating reimbursement rates, and this forces the premiums to become unaffordable for the beneficiaries.⁴⁶ The Medicare Advisory Payment Commission (MedPAC) found that Medicare’s rates for physicians are 81% of private rates and 75% for hospitals as a result of better negotiating leverage.⁴⁷ Proponents of a robust public option want to link the new public plan’s payment rates to the lower Medicare rates (or fixed at a certain level above Medicare rates but well below private negotiated rates); thereby lowering costs overall and ensuring the premiums of the public plan would be affordable. The public plan could achieve this almost regardless of its eventual size, by simply “teaming up” with the current Medicare

⁴³ Ibid, 6.

⁴⁴ Ibid, 6.

⁴⁵ Holahan, John and Linda J. Blumberg. “Is the Public Option a Necessary Part of Health Reform?” *The Urban Institute*. 26 June 2009. Web. 27 Oct 2010. 3.

⁴⁶ Ibid

⁴⁷ Hacker, “The Case for Public Plan Choice in National Health Reform.” 6.

payment setting structure. In fact, a Lewin Group⁴⁸ analysis concluded that *Commonwealth Fund* plan would result in a public option that offered premiums 30% below average employer premiums.⁴⁹

Critics of public health insurance argue that providers and hospitals are already forced to “cost shift” by charging private insurers more to make up for the relatively low Medicare rates—therefore, leading to higher premiums.⁵⁰ But robust plan advocates counter this objection by pointing out that the need for cost shifting (when providers and hospitals charge private insurance companies higher rates because of low Medicare payments) would be reduced because the public plan would expand coverage, therefore reducing fully or partially uncompensated care.⁵¹ More importantly, if more payments were made at the Medicare-level rates, private plans would simply need to be more aggressive in provider negotiations because of the price competition injected by the public plan.⁵² Implied in this argument is the notion that private health insurers are too complacent about passing on higher premiums to beneficiaries who have few other options for coverage. The public option would be that “exit ramp” through which the customers could abandon their private insurer if they didn’t feel they were keeping premiums at a fair level. This “security guarantee” is the fundamental principle behind public plan choice.⁵³ If the private insurance companies—which have increased profits at a rate greater than the growth of medical costs between 2000 and 2009—are not keeping their premiums at an affordable rate, they will

⁴⁸ The Lewin Group is health care policy research firm that is widely cited by both Democrats and Republicans and considered to be bipartisan. However, during the debate, health reform advocates questioned whether Lewin was actually impartial as the Lewin Group is owned by UnitedHealth Group, one of the nation’s largest private health insurance companies.

⁴⁹ Davis, Karen. “Public Programs: Critical Building Blocks in Health Reform,” Testimony before the Senate Finance Committee, 16 Jun 2008.

⁵⁰ See Hacker and Halohan, Blumberg,

⁵¹ Hacker, “The Case for Public Plan Choice in National Health Reform.” 9.

⁵² Halohan and Blumberg, 12.

⁵³ Iglehart, John and Chris Fleming. “The Public-Plan Option: A Roundtable With Stuart Butler, Jacob Hacker, and Len Nichols.” *Health Affairs Blog*. Health Affairs, 30 April 2009. Web. 27 Oct 2010.

lose their customers to the new competition, the public plan.⁵⁴ In theory, this competition between public and private—and the resulting pressure on private plans to negotiate lower reimbursement rates with providers, hospitals, and drug companies—would lead to a “bend” in the upward growth of healthcare costs and premiums for families and businesses.

Supporters of the robust public option insist that regulated private insurance competition through an exchange would not succeed in controlling costs. As an example, the FEHBP plan had a 7.3% annual spending growth rate per enrollee from 1985-2002, compared with 5.8% for Medicare. The FEHBP rate was just 0.1% less than private health insurance. Thus, a regulated exchange of private insurance plans would not restrain costs in a manner adequate to ensure Americans could afford their health care coverage—only a public plan that takes advantage of purchasing power could achieve the desired outcome.⁵⁵

PUBLIC OPTION IN NAME ONLY: An Effort to Create a Truly Level Playing Field

Before discussing the arguments against a robust public option plan, let me first address an alternative plan developed by Len Nichols and John Bertko of the *New America Foundation*. The proposal envisioned the significant resistance to a robust public option, and instead offers a public option with tighter reassurances that the plan would not receive special treatment compared to the competing private plans on the exchange.⁵⁶ This includes the decoupling of the public plan from Medicare payment rates, and would instead require the public option to have to

⁵⁴ Halohan and Blumberg, 2.

⁵⁵ Hacker, “The Case for Public Plan Choice in National Health Reform.” 11.

⁵⁶ Nichols and Bertko, 3.

negotiate payment rates with providers, hospitals, and drug companies—just as a private insurance company would. Further, the public plan would not be able to join with Medicare to coerce the participation of providers that accept Medicare.⁵⁷ In short, the new public plan would have as little to do with Medicare as any other private plan. As a result, the so-called “moderate” public option outlined here would not serve as a method for long term cost control as envisioned by robust public option advocates.

Instead, the moderate plan is designed to ensure that individuals have access to a publically run plan, even if it is the same as the private plans in all but managerial control. According to Nichols, there is widespread distrust of private insurance companies and skepticism that private insurers would follow any new rules that would be instituted through the health reform bill.⁵⁸ As an example of public anger with insurance companies, consider the stories of private insurers skimping on coverage of undisputedly necessary care or kicking people off of their plans once they became sick that were repeatedly discussed during the 2008 presidential campaign.

The key tenet of the moderate public option is to ensure a completely level playing field, with the same rules applying to all plans—public or private.⁵⁹ The first principle that must be met is divided governance. In order to prevent any conflict of interest, the administrator of the public plan must be completely separated from those governing the exchange. Those overseeing the exchange and enforcing its rules should not have an incentive to favor the public plan over competing private plans.⁶⁰ In order to achieve this separation of powers, the proposal calls for

⁵⁷ Ibid, 7.

⁵⁸ Iglehart and Fleming.

⁵⁹ Nichols and Bertko, 6.

⁶⁰ Ibid, 6.

the use of a non-governmental manager who would report to an independent board of directors. This board would provide oversight to either the exchange or the public plan, with the assumption being that whichever one the Board did not oversee would be run by the Department of Health and Human Services (HHS).⁶¹

Another principle of the moderate public option is that the plan must be funded exclusively through premiums, without additional subsidies or support from tax-payer dollars—meaning the plan would have to be actuarially sound.⁶² The same subsidies that would be awarded to low-income individuals purchasing private coverage on the exchange (for those up to 400% of the Federal Poverty Level⁶³) could, however, still be used in the same fashion on the public plan.⁶⁴

The public plan would be required to structure itself in a fashion similar to private plans. If the public plan wanted to be organized as a Preferred Provider Organization (PPO) or Health Maintenance Organization (HMO) it should be allowed to do so in order to adapt to unique local market conditions.⁶⁵ The public plan also would be required to offer the equivalent level of benefits as the competing private plans on the exchange. Finally, the public plan should be required to store reserve funds in order to avoid premium increases resulting from unexpectedly high claims. This would insure that the public plan does not take unfair advantage of its ability to run deficits and rely on the propping up of the government.⁶⁶

⁶¹ Ibid, 6.

⁶² Ibid, 7.

⁶³ "Side by Side Comparison of Major Health Care Proposals." *KFF.org*. Kaiser Family Foundation , 21 Apr 2010. Web. 2 May 2011.

⁶⁴ Nichols and Bertko, 7.

⁶⁵ Ibid, 8.

⁶⁶ Ibid, 8.

Proponents of the moderate plan do not argue for the use of the public option as the main conduit for cost containment. Instead, they argue for a “more systemic” approach that would emphasize health information technology and comparative effectiveness studies to find the most cost efficient, quality care.⁶⁷ Robust plan supporters counter that, while these are good steps, they would barely make a dent towards bending the upward cost curve.⁶⁸

ARGUMENTS AGAINST ANY PUBLIC OPTION

The criticisms against the public plan are dependent on exactly what the author means when he or she takes aim at the “public option.” I will first address widespread criticisms of the robust public option before turning to issues with the moderate plan.

The main point of objection for opponents of the robust public option is that a large public plan, linked to Medicare payment rates, would lead to a significant crowd out of private health insurance coverage.⁶⁹ That is, there would be a transfer of individuals from private health insurance coverage to public coverage. Crowd out would occur as Americans would either be forced to choose the public plan after their employer ceased offering coverage, or as someone decided to choose the public plan because of lower premiums.

The most striking aspect of the policy debate is that if one side views the linking of the public plan to Medicare payment rates as the *sin qua non* for an effective public option, the other

⁶⁷ Ibid, 9.

⁶⁸ Iglehart and Fleming.

⁶⁹ Moffit, Robert, “How a Public Health Plan Will Erode Private Care.” *The Heritage Foundation*. 22 Dec 2008. Web. 4 May 2011. 1.

views it as the main culprit in a plot to eliminate the American private health insurance system. Critics of the public option argue that Medicare payment rates to providers are significantly less than the private rates because of cost shifting. A 2008 Medicare Payment Advisory Committee (MPAC) study showed that two-thirds of hospitals have negative returns on Medicare payments, and therefore must charge private insurers more in order to make up the difference.⁷⁰ Additionally, the Lewin Group found that Medicare payments amount to 81% of private payments to doctors, while Medicaid payments to doctors amount to only 56% of private payments. For hospitals, Medicare payments amount to 71% of private payments, and just 67% of private payments for Medicaid.⁷¹ According to a report by Milliman Inc, an actuarial consulting firm, the cost shifting as a result of public payment rates is \$1,788 for an average family of four.⁷² Therefore, if even more individuals were on insurance plans that used Medicare rates, the cost shifting burden would increase for the people remaining on private coverage, driving up their premiums.

The large size of the robust public plan is what opponents point to as evidence private insurance would not survive. Lewin predicted that over 130 million people would join the public plan if eligibility was unlimited and Medicare payment rates were used.⁷³ Similar to the *Commonwealth Study* mentioned earlier, Lewin found that premiums on the public plan would be 32% less than the average private plan.⁷⁴ Public option critics argue that with premiums significantly higher on the private plans, private insurers would likely be unable to remain in business, as customers would be forced to join the public plan as a result of unaffordable private

⁷⁰ Medicare Payment Advisory Committee, "Report to the Congress: Medicare Payment Policy," Mar 2008. Web. 4 May 2011.

⁷¹ The Lewin Group, "Opening a Buy-in to a Public Plan." *Lewin.org*. 5 Dec 2008, Web. 4 May 2011. 3.

⁷² Moffit, 8.

⁷³ The Lewin Group, "Opening a Buy-In to a Public Plan," 5.

⁷⁴ *Ibid*

premiums. Under a public plan tied to Medicare payment rates and with open eligibility, Lewin predicted that 118 million would switch from private coverage to public coverage, while 10-12 million would switch under the moderate public option. If the public plan were available just to those in the small group and self-employed, individual the switch from private coverage to the public plan would be 32 million with a plan using Medicare rates and 11 million for the moderate plan.⁷⁵ Over time, as the public plan gained more advantages based on its size, private insurers would likely be unable to compete for reasonable payment rates to providers. This would result in private plans becoming available only to a small portion of the population who could afford the even higher premiums. The long-term result would be a *de facto* single-payer health care system.

While this thesis will not fully discuss the pros and cons of this type of health care delivery system, advocates of market competition in health care argue that public insurance lacks the innovation that private plans need in order to survive. As Michael Cannon from the libertarian-leaning *Cato Institute* states, “Medicare and other government programs uniformly lag private insurance when it comes to quality [of care] innovation.”⁷⁶ Cannon further argues that the competition between health care plans and the way they pay providers (fee for service vs. prepayment/capitation⁷⁷) is the only way to continue quality innovation and hold down costs while still giving people choices of insurance coverage.⁷⁸

⁷⁵ Ibid

⁷⁶ Cannon, 6.

⁷⁷ Fee for service (FFS) is when payers pay providers for each service rendered after the fact, while prepayment or capitation (PP) is when payers pay providers a flat fee for a given patient or group of patients. Both have downsides: FFS can lead to doctors ordering unnecessary tests and higher costs, while PP can lead to lack of provider choice or doctor’s stinting on necessary care.

⁷⁸ Cannon, 8.

Criticisms of the moderate public option—which would, by all accounts, be smaller and not drive private insurance out of the market—stems from a deep-seated distrust of government. Opponents of the moderate plan do not believe that the government will not directly or indirectly aid the public plan if it falls short on its pledge to be actuarially sound. Especially in a bailout environment following the rescue of everything from Wall Street to the American auto industry, critics argue that the government would be unlikely to allow the public plan to go under, disrupting health care coverage for millions of Americans. Further, if the public plan were set up with all the safeguards deemed necessary, Congress has a history of interfering with public health plans, such as changes to Medicare Advantage depending on who is in control of Congress.⁷⁹ Finally, as Cannon points out, if the government was successful in “denying the public plan any special advantages, *it would cease to be a government program.*”⁸⁰ Moderate public option skeptics argue that there would be no point in creating a public plan that is identical to private plans in every way but who runs it—a “public plan in name only.” Stuart Butler likens the moderate public option to “bringing a three week old tiger to your apartment as a pet, and just saying, well, look how nice it is. Really over time it’s not going to be a problem for anybody. So get with the program.”⁸¹

⁷⁹ Cannon, 11.

⁸⁰ Cannon, 11.

⁸¹ “Public Plan Option: Fair Competition or a Recipe for Crowd-out.” Roundtable with Karen Davis, Karen Ignagni, John Holahan, and Stuart Butler. *Alliance for Health Reform*. 27 Apr 2009

WHY THE POLICY MATTERS

Policy design and criticism on the academic and think tank level has a profound impact on the political process. Nearly all these policy debates were waged in scholarly papers and Washington think tanks before the majority of the public had even heard of the public option. Many of the same arguments were made by the same experts in the form of testimony before the relevant House and Senate committees as the legislative debate picked up steam throughout the spring and summer of 2009.⁸² The public option debate was largely framed by the terms these scholars set forth. On one hand, Hacker and his liberal Democratic allies pushed his vision for the public option—a policy solution that could lower health costs for everyone and remake the health system into a true public-private hybrid for *all* Americans, not just the old, poor, and disabled. No longer would Americans be beholden to their insurance companies. The conservatives like Butler and Moffitt and their Republican allies pushed the argument that the public option was a “Trojan horse” for a single-payer, government takeover of health care in America. Nichols and Bertko and other moderates held out hope for a middle of the road solution. The two ends of the policy spectrum were clearly drawn for the upcoming health care debate. As the legislative process heated up, political realities would soon collide with policy ideals.

⁸² See, for example, Len Nichols’ testimony before the Senate Finance Committee on June 16, 2009 and Jacob Hacker’s testimony before the House Committee on Education and Labor on June 23, 2009.

Part 2: The Inside Game

As the debate over the public option moved from the world of academia to the halls of the United States Congress, President Obama called a bipartisan health summit to the White House on March 5, 2009. The event not only included Congressional leaders from both parties, but also representatives from key stakeholders, such as hospitals, insurers, doctors, and patient groups.⁸³ President Obama asked the audience to rise above the problems that had plagued past efforts. “The problems we face today are a direct consequence of actions that we failed to take yesterday. Since Teddy Roosevelt first called for reform nearly a century ago, we have talked and we have tinkered. We have tried and fallen short, we've stalled for time, and again we have failed to act because of Washington politics or industry lobbying.”⁸⁴ Despite calls for goodwill and cooperation, it was already clear the public option would be a lightning rod of controversy. Representative Roy Blunt (R-MO), a House Republican leader who attended the summit, commented, “If the government is one of the competitors, eventually there are no competitors left.”⁸⁵ Republican Minority Leader Senator Mitch McConnell (R-KY) and Senate Finance Committee Ranking Member Chuck Grassley released a letter they sent to President Obama proclaiming that “forcing free market plans to compete with these government-run programs would create an unlevel playing field and inevitably doom true competition. Ultimately, we

⁸³ "Obama Holds Health Summit at White House." *PBS.org* . 05 Mar 2009 . Web. 2 May 2011.

⁸⁴ *Ibid*

⁸⁵ *Ibid*

would be left with a single government-run program controlling all of the market.”⁸⁶ Clearly, prospects for Republican support for any form of public option seemed to be dim.

Despite the seemingly outright rejection of the public option from Republican lawmakers, the more liberal minded Democrats were dedicated to the policy. But could Democratic leaders pass the public option through a Congress that posed unique challenges in both chambers—and equally important—could the policy survive strong stakeholder opposition.

THE POLITICAL ENVIRONMENT

The political environment for health care reform was certainly strong, but not ideal. President Obama was elected running on a clear platform to enact comprehensive health reform, but during the transition the depth of the economic crises was becoming clearer. Nearly four and half million jobs were lost between when the recession officially started in December 2007 and January 2009, when Obama was inaugurated, and the unemployment rate was at 7.2% and rising.⁸⁷ Larry Summers, the chief economic advisor to President Obama, began arguing to defer health care reform until the country was out of the economic crisis. Chief of Staff Rahm Emmanuel and Senior Advisor David Axelrod—who were thinking more along political lines—began to doubt the wisdom of taking on such a large effort when the country was more concerned with jobs and the economy.⁸⁸ Emmanuel later said he “begged the President not to do

⁸⁶ Pear, Robert, and Sheryl Gay Stolberg. "Obama says he's flexible on health plan details." *The New York Times*. 06 Mar 2009 , Web. 2 May 2011.

⁸⁷ Uchitelle , Louis . "Jobless Rate Hits 7.2%, a 16-Year High." *New York Times*. 09 Jan 2009. Web. 2 May 2011.

⁸⁸ Daschle, Tom. *Getting it Done* . New York: St. Martin's Press, 2010. 116. Print.

[health reform],” in 2009, arguing it would take too long and drag down the rest of his agenda.⁸⁹ In the end, the President was committed to health care reform and settled on first passing an economic stimulus package and then immediately turning to health reform. However, the large size of the stimulus package—the final bill cost \$787 billion—became a partisan issue for conservatives who were concerned about the deficit. Republicans argued that the bill was too focused on spending and not enough on jobs. In the end, no Republican supported the bill in the House and only three Republicans in the Senate—Sens. Olympia Snowe (R-ME), Susan Collins (R-ME) and Arlen Specter (R/D-PA⁹⁰)—joined with the Democrats to pass the Recovery Act into law.⁹¹ Whether the majority of Republicans were interested in helping Obama pass *any* large-scale initiative is debatable, but regardless, the near unified Republican opposition to the Recovery Act would prove to be a red flag for bipartisan hopes in health care reform.

The reality for Obama and Democrats in Congress however, was that they didn’t really need Republican support—although it would not stop the White House and some moderate Democratic senators from trying to achieve bipartisanship. Building off wave elections stemming from the unpopularity of President George W. Bush in 2006 and 2008, Democrats had amassed the largest Congressional majorities in decades. The Democrats had an 80 seat majority in the House and, following the party switch of Sen. Arlen Specter and the recount victory of Sen. Al Franken (D-MN), a filibuster proof 60 seats in the Senate. If needed, Democrats would be able to pass health care reform without a single Republican vote.

⁸⁹ Alter, Jonathan. *The Promise: President Obama, Year One*. New York: Simon & Schuster, 2010. 244-45. Print.

⁹⁰ Largely because of his vote in favor of the Recovery Act, Arlen Specter switched from the Republican Party to the Democratic Party when his chances for survival in a Republican primary against challenger Pat Toomey were seen as little to none.

⁹¹ Herszenhorn, David . "Recovery Bill Gets Final Approval." *The New York Times*. 13 Feb 2009. Web. 2 May 2011.

THE HOUSE

The House provided a friendlier environment for the public option than did the senate, largely because of procedural rules. In the House, a simple majority vote is sufficient in order to pass legislation and the majority-led Rules Committee can limit the amount of Republican obstruction via amendments and procedural roadblocks. Furthermore, House Speaker Nancy Pelosi (D-CA) had the luxury of a large majority, meaning she could let some of the most conservative members of her caucus oppose the final House bill. However, Pelosi was limited politically by the so-called “Blue-Dog” coalition. The 52 member Blue Dog coalition consisted of moderate House Democrats, who were largely from rural, conservative districts that Rahm Emmanuel—as chair of the Democratic Congressional Campaign Committee in 2006—had recruited to expand the Democrat’s majority into seats that were traditionally considered Republican. By early July 2009, House Democratic leaders were prepared to release the “Tri-Committee” bill that was agreed upon the chairs of the relevant House committees—Energy and Commerce, Ways and Means, and Education and Labor. However, the Blue Dogs sent a letter signed by forty members to Pelosi demanding changes, to among other provisions, the public option.⁹² Representative Mike Ross (D-AK), chair of the Blue Dog’s health care task force, argued that a public option based on Medicare’s payment rates would severely harm rural providers, who already were struggling to keep up with Medicare rates that did not cover their costs. “You go to many doctors’ offices in my district, there will be a big sign on the door

⁹² Daschle, 153.

saying: ‘We no longer take Medicare patients.’”⁹³ Without the support of the Blue Dogs, Democrats did not have the votes to pass the bill.

Speaker Pelosi and the majority of the Democratic Caucus were determined to pass the robust public option, which the Congressional Budget Office—the non-partisan official economic scorekeeper of Congress—determined would save \$110 billion.⁹⁴ Pelosi explored using Medicare payment rates plus 5%, or even 10-15%, in order to attract Blue Dog votes, but the leadership continually fell short of the 218 votes needed.⁹⁵ Representative Henry Waxman (D-CA), chairman of Energy and Commerce, was forced to negotiate a deal with the Blue Dogs that called for a national public plan, on a national exchange, but with payment rates negotiated with providers just as private insurers do.⁹⁶ The plan was essentially the moderate public option advocated by Len Nichols and John Bertko. CBO determined the moderate public option would only save \$25 billion, seemingly undermining the Blue Dog argument that they were mainly concerned with limiting costs.⁹⁷ Additionally, the CBO determined the plan would only have 6 million enrollees—a relatively small number that would hardly change the market dynamics of the health insurance system.⁹⁸

Nonetheless, with the passage of the House bill on November 7th 2009, the inclusion of any public option—albeit a compromised version—was an important achievement for public option advocates, although they were not pleased with the payment rates.⁹⁹ The passage gave the

⁹³ Daschle, 154.

⁹⁴ Hunt, Kasie and Billy House. “CBO Estimates Show Public Plan With Higher Savings Rate.” *National Journal*. 25 Sep 2009. Web. 2 May 2011.

⁹⁵ Allen, Mike. “Pelosi Lacks Vote for most sweeping public option.” *POLITICO*. 23 Oct 2009. Web. 2 May 2011

⁹⁶ Daschle, 210.

⁹⁷ Hunt and House.

⁹⁸ Congressional Budget Office. “Preliminary Analysis of H.R. 3962.” 29 Oct 2009. Web. 2 May 2011.

⁹⁹ Beutler, Brian. “In Letter, House Progressives Object To Blue Dog Public Option Compromise.” *Talking Points Memo*. 30 Jul 2009. Web. 2 May 2011.

public option a sense of legitimacy ahead of the anticipated battle in Conference negotiations between the House bill and the more moderate Senate version. Furthermore, it kept the liberal base engaged and fighting for reform at a time when the Obama Administration and Democratic Senate leadership needed all the help they could get in defending health care reform from Republican critics. The continuing mantra for public option advocates in the House was that if the Senate could not produce a public option in their bill the House would win the battle in Conference, forcing at least some concessions from the Senate. Representative Anthony Weiner (D-NY), a single-payer advocate who became one of the public option's most outspoken proponents, commented when it was clear the Senate bill would not contain a public option: "That's what you have a conference for. I'm going to fight for the House position that included the public option."¹⁰⁰ If the House had not passed a public option, the single payer and robust public option advocates—who were the strongest supporters of health care reform in general, would have been less engaged when health care reform struggled to get to the finish line in late 2009 and early 2010.

THE SENATE

The U.S. Senate proved to be much tougher terrain for the public option. This is largely because of the procedural rules of the senate which allows the minority party to infinitely block progress on a bill—a practice called a filibuster. The practice of filibustering is most famously

¹⁰⁰ Carty, Daniel. "Weiner: House will Fight for Public Option." *Political Hotsheet*. CBS News, 16 Dec 2009. Web. 2 May 2011.

known for the scene in the movie classic *Mr. Smith Goes to Washington*, but the reality of the modern filibuster is that the minority party does not have to stand up and speak on the floor endlessly. As Bob Dove, Senate Parliamentarian from 1966 to 2001 said, “You cannot force senators to talk during a filibuster. Delay in the Senate is not difficult and, frankly, the only way to end it is through cloture.”¹⁰¹ Cloture is the practice of ending a filibuster and is required to bring a vote to the floor. Republicans forced over 90 cloture votes during the 111th Congress, many of them during the health reform effort.¹⁰² If health reform were to pass, it would need 60 votes.¹⁰³

With the party switch of Sen. Specter and the swearing in of Sen. Franken¹⁰⁴ in July 2009, the Democrats had the 60 votes they needed to pass health reform without a single Republican vote. However, prior to the swearing in of Franken, and afterwards, Senator Max Baucus (D-MT), Chairman of the Senate Finance Committee, had been working to achieve bipartisan consensus on his health plan. Over the course of the spring and summer, a bipartisan group of six Finance Committee senators—three Democrats and three Republicans—met 31 times to try and achieve a bipartisan deal.¹⁰⁵¹⁰⁶ Two of the three Republicans in the Gang of Six were considered in play, Senator Chuck Grassley (R-IA) and Snowe. Grassley was the harder to

¹⁰¹ Grimm, Ryan. “The Myth of the Filibuster: Dems Can’t Make Republicans Talk All Night.” *The Huffington Post*. 23 Feb 2009. Web. 2 May 2011.

¹⁰² “Times Topics: Filibusters and Debate Curbs.” *The New York Times*. 26 Jan 2011. Web. 2 May 2011.

¹⁰³ Democrats had one other option—a practice called budget reconciliation. Reconciliation allows for the passage of a bill with a simple majority, but is limited to items that are directly affect budgetary considerations. It was concluded the entirety of health reform could not be passed through reconciliation, but, following the loss of the Democrat’s 60 seat majority, it was used to pass certain “fixes” to the Senate bill before final passage into law in March 2010.

¹⁰⁴ Arlen Specter switched from the Republican Party to Democratic Party after his prospects for winning a GOP primary seemed dim. Specter had alienated the conservative base after his decisive vote in favor of the Recovery Act. Al Franken was sworn in July 2009 after a lengthy recount in his campaign against Norm Coleman.

¹⁰⁵ Daschle, 146

¹⁰⁶ The Gang of Six consisted of Sens. Olympia Snowe (R-ME), Mike Enzi (R-WY), Chuck Grassley (R-IA), Baucus, Jeff Bingaman (D-NM), and Sen. Kent Conrad (D-MT).

convince, while Snowe seemed more open to a deal but Democrats were worried she would not “go it alone” after taking heat for her Recovery Act vote.¹⁰⁷¹⁰⁸ For the Republicans in play, especially Grassley, the public plan was a non-starter. The question was whether they would support a bill even without one. Just prior to the August recess, after months of negotiations, President Obama had Grassley over to the White House for his sixth in person meeting during the course of the Gang of Six deliberations. Obama asked him “If we give you everything you want—and agree to no public plan—can you guarantee you would support the bill?” Grassley responded, “I cannot guarantee I would.”¹⁰⁹ When Grassley held town hall meetings the next month in Iowa, he said that end of life counseling reimbursement through Medicare—labeled “death panels” by its critics—would result in “pulling the plug on grandma.”¹¹⁰ With that, any hope for significant bipartisanship was over.¹¹¹

The Democrats would likely need all 60 of their members (or possibly 59 and Snowe) to agree on a plan—a daunting task for Majority Leader Harry Reid (D-NV). Reid supported the public option, as did the majority of his caucus. A moderate public option had passed the more liberal Health, Education, Labor, and Pensions (HELP) Committee chaired by Sen. Chris Dodd (D-CT).¹¹² However, the Finance Committee, which is controlled by more rural, conservative senators, twice voted down amendments that included a public option, once for a robust public option and once for a moderate plan. The moderate public option failed with Sens. Baucus, Kent

¹⁰⁷ Alter, 256.

¹⁰⁸ Daschle, 220.

¹⁰⁹ Alter, 257.

¹¹⁰ “Grassley Opposes ‘Pulling the Plug on Grandma.’” *Fox News*. 13 Aug 2009. Web. 2 May 2011.

¹¹¹ Grassley faced re-election in 2010, and support for health care would have virtually ensured a tough primary challenge. He ended up running against “Obamacare,” and won reelection easily. Snowe supported the Finance Committee bill but backed out when the bill came to the floor.

¹¹² “Side by Side Comparison of Major Health Care Proposals.”

Conrad (D-MT), and Blanche Lincoln (D-AK) joining in opposition with all the Republicans.¹¹³ Once again, concerns of rural legislators about Medicare rates were central to their opposition. Conrad protested, “Every hospital in my state goes broke” under the [robust public option]. “I can’t possibly support an amendment that does that.”¹¹⁴ However, opposition to the negotiated rate, moderate public plan can be tied to nothing besides distrust of government from legislators that represent deeply conservative states. In fact, being able to “stand up to the public option,” while supporting the rest of health care reform, became a popular political positioning tactic for conservative Democrats. Blanche Lincoln ran campaign ads in 2010 touting her opposition to the public option as evidence of her independence from Washington Democrats.¹¹⁵¹¹⁶

When the Finance Committee passed its reform bill, all eyes were on Majority Leader Reid, who had to decide the details of the bill he would bring to the floor. He faced a dilemma regarding the public option. Reid personally supported the public option, not just because he viewed it as good policy, but also because it was necessary for his own political survival.¹¹⁷ Reid was up for re-election in 2010 and his approval rating in Nevada was weak enough that he was sure to face a tough re-election challenge. As Majority Leader, Reid would need his widespread liberal donor base and the organizing efforts of unions and progressive groups if he were to survive a conservative assault in 2010. Further, Reid knew the majority of his caucus supported the public option, and he would infuriate them by not doing everything he could to have it in the final bill. Better to have the progressive wing of his caucus—and the public option devotees in

¹¹³ Romm, Tony. “Schumer’s Public Option amendment defeated.” *Blog Briefing Room*. The Hill, 29 Sept 2009. Web. 2 May 2011.

¹¹⁴ Murray, Shailagh, and Lori Montgomery. “Prospects for Public Option Dim in Senate.” *The Washington Post*. 30 Sept 2009. Web. 2 May 2011.

¹¹⁵ Stein, Sam. “Lincoln’s First Ad Touts Opposition to Public Option, Cap and Trade.” *The Huffington Post*. 4 Mar 2010. Web. 2 May 2011.

¹¹⁶ Lincoln ended up surviving a strong primary challenge from Lt. Gov. Bill Halter, but losing badly in the general election.

¹¹⁷ Daschle, 222.

the public—blame the few moderates that would eventually kill the policy, than to have them view him as the sole culprit. In addition, Reid knew he could likely gain policy concessions down the road if the public option was included now, but had to be stripped out later.

However, Reid knew there were not 60 votes in favor of the public option—as was made clear by the failure of the Finance committee amendments. The other downside of including the public option was that it was sure to alienate Snowe. The moderate Maine senator had previously vocalized support for a public option with a so-called “trigger,” which would have initiated the creation of a public plan down the road if private insurance companies did not contain premium costs.¹¹⁸ However, Snowe was becoming uncomfortable with her position as the lone Republican supporter, and if Reid introduced a full public option in his bill he would likely lose Snowe for good.¹¹⁹

After weighing the pros and cons, on October 26, Reid opted to include a public option—albeit with a state opt-out provision in an attempt to woo moderate votes—in his bill.¹²⁰ With Snowe out, Democrats would need every last vote of their caucus, leaving Reid susceptible to negotiations with those senators who were on the fence, yet had all the leverage. In an attempt to build consensus within the caucus, Reid formed a group of ten senators, five progressives and five centrists, and tasked them with finding common ground on controversial topics, including the public option.¹²¹ Nelson and Lieberman had publically denounced the public option, so it was hard to imagine they would vote for it in any form. A two part compromise plan was developed. The public option would be dropped in favor of a national, yet privately run, health insurance

¹¹⁸ Klein, Ezra. “Olympia Snowe’s Trigger Amendment.” *The Washington Post*. 21 Sept 2009. Web. 2 May 2011.

¹¹⁹ Anonymous Health Care Lobbyist. Personal Interview. 2 Feb 2011.

¹²⁰ Daschle, 223.

¹²¹ Daschle, 226.

plan that would be offered in multiple states. At least one of these plans would have to be nonprofit. The plan's contracts and premiums would be negotiated by the Office of Personal Management (OPM), yet run by an outside private company.¹²² This is similar to the plan run by the OPM for federal employees and members of Congress through the FEHBP.¹²³ This proposal was much more amenable to the centrists, but the progressives would demand something in return for dropping the public option. Therefore, the second leg of the compromise would be a Medicare buy-in option for individuals aged 55-64, who did not have another source of health insurance.¹²⁴ However, the Medicare expansion proposal was short lived, when Lieberman went on a Sunday talk show and denounced the plan, saying "it will add taxpayer cost. It will add to the deficit. It's unnecessary."¹²⁵ Lieberman's stance was shocking to progressives who noted that Lieberman had backed the exact same proposal as the Democrat's Vice Presidential nominee in the 2000 campaign and also endorsed the idea as recently as a few months prior in a *Connecticut Post* online video interview.¹²⁶

Nevertheless, Reid's inclusion of the public option was crucial in gaining additional concessions from moderates that made the bill as comprehensive as possible. While the public option and Medicare expansion were out, the national FEHBP-like non-profit plan was in. Progressives were also able to gain strengthened insurance cooperatives that would be set up in all 50 state-based insurance exchanges. These co-ops would have to use profits to lower premiums and plan management would be controlled by co-op members.¹²⁷ Additionally, progressives secured strengthened "rate review" procedures and increased funding for the

¹²² "Side by Side Comparison of Major Health Care Proposals."

¹²³ Daschle, 226.

¹²⁴ Daschle, 226.

¹²⁵ Daschle, 227, cited from *CBS Face the Nation*, December 13, 2009.

¹²⁶ Sargent, Greg. "VIDEO: Watch Lieberman Endorse Medicare Buy-In Three Months Ago." *The Plum Line*. The Washington Post. 14 Dec 2009. Web. 2 May 2011.

¹²⁷ "Side by Side Comparison of Major Health Care Proposals."

program. The rate review policy forced health plans to spend at least 85% of premiums on medical care, instead of on internal profits and administrative overhead, or they would have to give rebates to their customers.¹²⁸¹²⁹ In order for states to provide more stringent oversight on private insurance company premium increases, \$250 million in state rate review grants were secured as well, which proponents argue will help keep insurers from raising premiums at an unnecessarily high rate.¹³⁰ Without the inclusion of the public option in the Senate bill, Reid and other progressive Democrats would not have been able to achieve these significant policy achievements. After some additional concessions to secure the last few Democratic holdouts, the Senate passed health reform on Christmas Eve with the support of all 60 Democrats and no Republicans.¹³¹

BACK FROM THE DEAD

When Congress returned from the holiday recess, House and Senate Democrats huddled to attempt and work out the differences between the two chambers' bills. For House Democrats who had hoped the Conference Committee process would allow them to negotiate the public option into the final bill, their optimism would soon be met with political reality: Nelson and Lieberman would need to sign off on the bill, and there was no way the package could include a

¹²⁸ Daschle, 227.

¹²⁹ "Side by Side Comparison of Major Health Care Proposals."

¹³⁰ Pecquet, Julian. "Democrats tout healthcare reform's insurance rate review grants." *Healthwatch*. The Hill. 16 Aug 2010. Web. 2 May 2011.

¹³¹ The concessions—especially extra federal assistance for Medicaid costs in Nebraska and Louisiana to woo Sens. Nelson, and Mary Landrieu (D-LA)—became a rallying cry for conservative critics who decried the backroom deal making. The concessions were also public relations catastrophes, as the deals deridingly became known as the "Cornhusker Kickback" and the Louisiana Purchase. The Nebraska deal was later taken out of the bill, but the Louisiana deal survived.

public option in any form. In fact, Waxman was worried that it would be nearly impossible to come up with a compromise bill that would be amenable to both Nelson and House progressives.¹³² The main sticking points were differences over taxes and revenue sources, as well as the overall cost of the package. The Democrats finally reached a deal after lengthy negotiations the week prior to the Massachusetts special election to fill the Senate seat of the late Ted Kennedy. However, the bill needed to be scored by the CBO and there would certainly be some tinkering necessary to gain the votes of the last few holdouts.

Democrats had always operated under the assumption the 60 votes would be there when the time came. However, on January 19th, 2010, Republican Scott Brown defeated Democrat Martha Coakley for the U.S. Senate seat from Massachusetts. His supporters rallied around his victory, proclaiming “Scott Brown, 41!” whenever they had the chance.¹³³ The “41” mantra was referring to Brown’s position as the 41st vote against health reform, meaning the Democrats could no longer overcome a Republican filibuster and pass the conference bill through the Senate. It appeared as if health care reform was dead, despite how far Democrats had come.

However, after the first few days of what reporter Richard Wolffe, aptly described as a “mixture of mass hysteria and civil war,” Democrats landed on the only practical option to move the bill forward: have the House pass the Senate bill and then use budget reconciliation, which only required a simple majority in the Senate, to pass a package of “fixes.”¹³⁴ To some in the White House and the Senate, the Massachusetts election had a silver lining. “Coakley [losing] may be a blessing in disguise,” said one senior Obama aide. “If progressives realize we do not

¹³² Wolffe, Richard. *Revival: The Story for Survival Inside the Obama White House*. New York: Crown Publishers, 2010. 79. Print.

¹³³ Davis, Teddy. “Scott Brown, #41: ‘I Wasn’t Just Elected on Health Care.’” *The Note*. ABC News. 26 Mar 2010. Web. 2 May 2011.

¹³⁴ Wolffe, 85.

have the sixty votes, it takes that monkey off our back. As long as the House acts like grown-ups and takes the Senate Bill, then deals with the other stuff through reconciliation.”¹³⁵

Ironically, progressives viewed the necessity to pass a separate reconciliation bill, as a potential for the public option to come back from the dead. Progressives had been clamoring all along for passing the most controversial reforms through reconciliation—and the public option had budgetary impacts, making it permissible to pass using the legislative maneuver. Now was their chance. The prevailing view from progressive activists, like Adam Green from the Progressive Change Campaign Committee (PCCC), was that House had already passed the public option and could include it in their reconciliation bill, which would only need 50 votes in the Senate. Gone was the necessity to convince Lieberman, Nelson, Lincoln and other moderate to conservative senators of the benefits of the proposal. The public option had never been voted on by the entire Senate, and as Lieberman demonstrated, policy positions on health care can shift with the prevailing political winds of the day—which were blowing directly against a more liberal bill in the aftermath of the Massachusetts election. Nevertheless, 50 votes did seem attainable.

Green and the PCCC set out to prove to Pelosi that the Senate would have the votes if the House passed the public option in the reconciliation bill. The PCCC circulated a letter from Sen. Michael Bennet (D-CO), with co-signatures from Sens. Jeff Merkley (D-OR), Sherrod Brown (D-OH), and Kirsten Gillibrand (D-NY), to Reid.¹³⁶ He was able to convince Majority Whip Sen. Dick Durbin (D-IL) to say on the record, he would “aggressively whip votes for the public

¹³⁵ Ibid

¹³⁶ “The Bennet Letter on the public option.” The Progressive Change Campaign Committee. 16 Feb 2010. Web. 2 May 2012. <http://whipcongress.com/letter-senate>

option if it is included in the reconciliation bill the House sends over.”¹³⁷ Green was able to garner 41 commitments, 9 short of the 50 needed for passage with assistance from Vice President Biden.¹³⁸ Tireless in his advocacy, Green continued to push Pelosi. The PCCC went up on air in San Francisco with a television advertisement, which combined the 41 commitments with old video clips of other Democratic Senators supporting the public option, as the count reached 50.¹³⁹ Green and other progressive activists, such as Jane Hamsher from the liberal blog Fire Dog Lake, argued that 50 votes were there if you accounted for past public, on-the-record commitments and prior votes in committee.¹⁴⁰ Skeptics pointed out that if Green could have gotten 50 commitments on the Bennet Letter, he would have done so—there was a reason he stalled at 41 votes. Nevertheless, the progressives argued that if the House just sent the bill over, the remaining Democratic holdouts would not be willing to kill the entire bill over the public option.¹⁴¹

Pelosi had her own vote counting issues in the House. Before the reconciliation package was even considered, the House would need to pass the Senate bill as written. Pelosi had to first keep progressive members on board, who were upset the bill did not contain a public option, disliked the Senate’s state-based exchanges versus the House’s national exchange, and thought the low-income insurance subsidies were insufficient.¹⁴² Even if Pelosi was able to convince liberals that the Senate bill was better than nothing, she would have a tough time holding the moderates who were upset that the strict Stupak language—which prohibited abortion coverage

¹³⁷ Murphy, Patricia. “Nancy Pelosi: Public Option Will Not Be in the Health Care Bill.” *The Capitolist*. Politics Daily, 12 Mar 2010. Web. 2 May 2011.

¹³⁸ Ibid

¹³⁹ Smith, Ben. “PCCC pushes public option in San Francisco.” *Ben Smith*. POLITICO, 15 Mar 2010. Web. 2 May 2011

¹⁴⁰ Hamsher, Jane. “List of 51 Senate Democrats Who Support a Public Option: What’s Stopping Them Now?” *Firedoglake*. 29 Jan 2010. Web. 2 May 2011.

¹⁴¹ *The Ed Show*. MSNBC: 12 Mar 2010. Television. 2 May 2011.

<http://www.msnbc.msn.com/id/21134540/vp/35844133#35844133>

¹⁴² Daschle, 234.

in the public option and for individuals who received subsidies from the Federal Government—was not included in the Senate bill.¹⁴³¹⁴⁴ Many of these members had been planning to demand language as strict as Stupak in the final bill, but the package of fixes—which would be passed through budget reconciliation—could not address the abortion issue because it had no direct budgetary impact.¹⁴⁵ Many of the last votes to pass the House bill in November came from Stupak allies, and if the Speaker lost some of those votes, she would need to flip “no” votes to “yes.” Even after Stupak reached a compromise with President Obama over an Executive Order that aimed to ensure his amendment’s goals, Pelosi was barely above the vote threshold she needed for passage. The votes on the margin’s—especially the no-to-yes flips she would need—were moderate Democrats who were either openly against the public option, or uneasy about moving the bill in a more progressive direction.

In public statements, a visibly frustrated Pelosi could not believe she was being positioned as the person responsible for the downfall of the public option—for which she had fought for all along. “I’m not having the Senate, which didn’t have a public option in its bill, put any of that on our doorstep. We had it. We wanted it. [The Senate] did not have it. It is not in the reconciliation [bill],” she said in a press conference. “[The public option] is not in there because

¹⁴³ Stein, Sam and Ryan Grim. “Nancy Pelosi Will Not Include Public Option in Final Bill.” *The Huffington Post*. 12 Mar 2010. Web. 2 May 2011.

¹⁴⁴ Rep. Bart Stupak (D-MI) successfully inserted an amendment into the House Bill that prohibited the federal government “to pay for any abortion or to cover any part of the costs of any health plan that includes coverage of abortion, except in cases of rape, incest or danger to the life of the mother.” Proponents argued this was the only way to uphold the Hyde Amendment given the creation of the Public Plan and the new federal subsidies for private insurance. Under Stupak, abortions could not be included in the public plan or on plans where federal subsidies are provided. Critics argued that Stupak amendment would prevent women from purchasing abortion coverage, especially low-middle income women who receive federal subsidies and are forced to purchase a separate abortion coverage with their own money. For more, see *The Washington Post* analysis here: <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/14/AR2009111401597.html?hpid=topnews>

¹⁴⁵ Stein, Sam and Ryan Grim. “Nancy Pelosi Will Not Include Public Option in Final Bill.”

the [Senate] does not have the votes.”¹⁴⁶ In reality, the Senate most likely had a decent chance to get to 50 votes, but Pelosi could not afford to risk of losing her own moderates. In the end, the House passed the Senate bill by a 3 vote margin, with 5 moderate Democrats who opposed the original House bill—with a public option—voting yes.¹⁴⁷ The public option was not included in the reconciliation package, and the proposal was deemed dead.

In contrast with the role of the public option debate overall, the late re-emergence of the public option did not prove to be a net benefit for those seeking to pass the most comprehensive health care bill possible. The public option had already been traded away for significant concessions in the Senate bill. Progressive activists who had been among the most vocal supporters of health reform, found themselves bitterly disappointed after getting their hopes up again for a policy they thought was already dead. It forced Pelosi to choose between the policy she wanted all along, and falling short of the votes needed to pass the entirety of the bill.

However, the importance of discussing the late resurgence of the public option is rooted in the fact that changing political circumstances can have important influences on the legislative journey of a policy. If in late 2009, the Senate simply needed a simple majority to pass the public option, it certainly would have been in the law. Ironically, the Massachusetts defeat actually put the public option on its most realistic path to enactment. Passage surely would not have been easy. While 60 votes in the Senate was likely impossible, 50 Senators and the majority of the House surely was not. However, reinserting the most controversial element of reform at a point where a Republican had just won an election—largely running against health care—in one of the most Democratic-leaning states in the country, had Congressional Democrats looking to cash out fast with what they had, not double down.

¹⁴⁶ *House Speaker Weekly Briefing*. C-SPAN: 12 Mar 2010. Television. 2 May 2011. <http://www.c-spanvideo.org/videoLibrary/clip.php?appid=597827431>

¹⁴⁷ Daschle, 258.

THE WHITE HOUSE AND STAKEHOLDERS

In the effort to pass comprehensive health reform, the White House was determined to learn the lessons of the failed 1993-1994 Clinton reform effort. Two central pillars of the White House strategy this time around were to let Congress write the bill—albeit with close executive branch supervision and collaboration—and to keep key industry stakeholders involved, invested, and supportive of reform.¹⁴⁸ This is in contrast with the Clinton effort when the White House sent a complete health care plan to Congress and stakeholders were in unified, outright opposition from the outset.

Health care stakeholders, with their hefty resources and lobbying budgets, doomed the Clinton health care effort, and the Obama Administration was determined to not let that happen this time around. In 1993, the infamous “Harry and Louise” ads were run by the Health Insurance Association of America in opposition to the Clinton health plan. The ads showed a couple talking around their kitchen table and determining “there has to be a better way” than the Clinton Plan. The ad came to symbolize the relentless chorus of interest group opposition to Clinton Plan.¹⁴⁹ In 2009, Harry and Louise would return on behalf of the pharmaceutical industry—but this time in support of reform.¹⁵⁰

The industry support (for the most part) of the 2009-2010 health care reform was a result of a coordinated White House-led strategy to get stakeholders behind the reform effort—or at

¹⁴⁸ Daschle, 129.

¹⁴⁹ Hacker, Jacob S. "The Road to Somewhere: Why Health Reform Happened." *Perspectives on Politics* 8.03 (2010): 861-76. Web. 3 May 2011.

¹⁵⁰ Hacker, "The Road to Somewhere," 864

least to avoid the full out attack that killed Clinton’s plan. For stakeholders, they came to the realization that health reform was going to happen given the political environment. The question was whether to be involved and have a seat at the table or to fight reform from the outside in the hope of killing it. As one health care lobbyist told me, “the [stakeholders] all knew that something big [on health care] was going to happen, they all knew that Democrats had the numbers to do it, and they all knew the President wanted to do it. They all wanted to be involved. It’s better to be inside the room talking about it, than outside the room listening to it.”¹⁵¹

On May 11, 2009, the big industry groups, consisting of doctors (American Medical Association, or AMA), pharmaceutical companies (Pharmaceutical Research and Manufacturers of America, or PhRMA), hospitals (American Hospital Association and Federation of American Hospitals, or AHA and FAH), health insurance companies (America’s Health Insurance Plans, or AHIP), and medical device manufacturers, (Medical Device Manufacturers of America, or MDMA), met with President Obama in the White House and pledged to take steps that would result in limiting the growth of health care costs by 1.5% per year. If they were able to actually deliver on the pledge, it would save \$2 trillion over ten years.¹⁵² After the trade group leaders received blowback from many members, they quickly downplayed their commitment and said that Obama had “overstated” their cost-saving commitments.¹⁵³ This highlighted the fact the industry-wide pledge was mostly symbolic and, indeed, far from representing enforceable cost controls. Nevertheless, the fact that the meeting and pledge even took place signaled that industry was at the table and ready to take an active role in health reform.

¹⁵¹ Anonymous Health Care Lobbyist Interview

¹⁵² Fletcher, Michael A and Ceci Connolly. “Health Groups Vow Cost Control.” *The Washington Post*. 11 May 2009. Web. 3 May 2011.

¹⁵³ Pear, Robert. “Health Care Leaders Say Obama Overstated Their Promise to Control Costs.” *The New York Times*. 14 May 2009. Web. 3 May 2011.

The larger industry-wide pledge paved the way for one-on-one stakeholder specific deals. Each stakeholder had its own issues, concerns, and priorities—especially in relation to the public option. The AMA was the most supportive of reform overall. Their main concern was that Medicare payment rates were already insufficient and scheduled payment reductions—set to take place in 2011—had to be reversed.¹⁵⁴ Largely because of their distrust and dissatisfaction with Medicare payments, the AMA opposed the public option.¹⁵⁵ Nevertheless, the AMA ended up endorsing not only the Senate bill, but also the House bill, which included a public option—albeit a plan not tied to Medicare rates.¹⁵⁶ While the AMA is not as powerful as it once was, doctors still hold considerable sway over lawmakers and are more trusted among the public than insurers or drug companies. Having the organization that doomed Franklin Roosevelt and Harry Truman’s health care efforts on the side of reform was a positive first step. In return, Congress later passed the so called “doc fix” which prevented the scheduled 25% Medicare payment reductions until 2012, although a permanent fix was put off because of the hefty price tag associated with a the long-term measure.¹⁵⁷

The White House was looking to get at least one of the big moneyed interests—who had traditionally opposed reform efforts—behind the current health care initiative. PhRMA was determined to be the best fit. The White House reached out to PhRMA’s chief lobbyist, former Congressman Billy Tauzin (R-LA) and directed him to meet with Baucus.¹⁵⁸ “The [White House] wanted a big player to come in and set the bar for everybody else,” Tauzin said. “We

¹⁵⁴ “AMA, AARP back House health care bill.” *CNN*. 5 Nov 2009. Web. 3 May 2011.

¹⁵⁵ Pear, Robert. “Doctor’s Group Opposes Public Insurance Plan.” *The New York Times*. 10 Jun 2009. Web. 3 May 2011.

¹⁵⁶ Hacker, “The Road to Somewhere.” 865.

¹⁵⁷ Millman, Jason. “House passes Obama-backed doc fix.” *Healthwatch*. The Hill, 9 Dec 2009. Web. 3 May 2011.

¹⁵⁸ Kirkpatrick, David D. “White House Affirms Deal on Drug Cost.” *The New York Times*. 5 Aug 2009. Web. 3 May 2011.

were assured: ‘We need somebody to come in first. If you come in first, you will have a rock-solid deal.’¹⁵⁹

Baucus and Tauzin began to work out a deal. Baucus wanted commitments from drug companies to realize cost savings that would go towards paying for health reform. Baucus’s staff opened negotiations with \$100 billion, arguing that the 30 million or so newly insured customers under health reform would now have policies that covered their prescription drugs.¹⁶⁰ PhRMA responded by arguing that many of the new customers, about 65%, were young and healthy, and, as a result, would be less reliant on prescription drugs.¹⁶¹ After a series of meetings, they agreed on \$80 billion of contributions over a ten year period that would prevent these costs from being passed on to taxpayers and senior citizens.¹⁶² About \$30 billion would go towards closing the donut hole in Medicare Part D prescription drug coverage, although PhRMA only agreed to finance half of the cost to completely close the donut hole.¹⁶³¹⁶⁴ The remaining contributions would consist of increased in Medicaid reimbursement rates, and other assorted taxes.¹⁶⁵ In return, Baucus and the White House promised to oppose importation of cheaper drugs from Canada and government involvement in Medicare prescription drug price negotiations—what the industry calls upholding “non-interference.”¹⁶⁶ This pledge had direct implications for the public option as well. Proponents of the robust public option surely would include prescription drugs under the umbrella of government negotiated cost containment. If in the public plan, provider

¹⁵⁹ Ibid

¹⁶⁰ Cummings, Jeanne. “Wielding Influence in health care fight.” *POLITICO*. 28 Dec 2009. Web. 3 May 2011.

¹⁶¹ Ibid

¹⁶² Kirkpatrick, “White House Affirms Deal on Drug Cost.”

¹⁶³ Blumenthal, Paul. “The Legacy of Billy Tauzin: The White House-PhRMA Deal.” *The Sunlight Foundation*. 12 Feb 2010. Web. 3 May 2011.

¹⁶⁴ The so called “donut hole” is a gap in Medicare Part D coverage for prescription drugs, where there is no coverage for drugs from when beneficiary spends \$2,700 until the beneficiary spends \$6,154 (after which catastrophic care coverage kicks in).

¹⁶⁵ Grim, Ryan. “Internal Memo Confirms Big Giveaways in White House Deal With Big Pharma.” *The Huffington Post*. 13 Aug 2009. Web. 3 May 2011.

¹⁶⁶ Ibid

payment rates were to be negotiated by the government—like Medicare—so to would drug prices. PhRMA would not support government involvement in any drug price negotiations, neither in Medicare, nor in any public option. PhRMA opposed the public plan but their lobbyists acknowledged they had no need to fight it directly, largely because their agreement with the White House provided them other safeguards.¹⁶⁷ To PhRMA the public option would not pose direct threat as long as non-interference was upheld.

At the beginning of these negotiations, a meeting was set up at the Democratic Senatorial Campaign Committee between aides to Baucus and Obama and PhRMA representatives. The meeting led to the creation of a group named “Americans for Stable Quality Care (ASQC),” and advocacy group that would later run pro-reform TV advertisements such as the new Harry and Louise spot. The White House, Baucus’ office, and the lobbyist themselves insist no *quid pro quo* took place between the \$80 billion dollar deal and the financial resources poured into ASQC.¹⁶⁸ Twelve million dollars were set aside by PhRMA to get the advocacy groups off the ground and running initial ads. Five days after Baucus released his Finance Committee bill—which upheld both sides’ pledges in the \$80 billion deal—PhRMA announced it was launching a \$150 million ad campaign through ASQC in support of the Baucus bill.¹⁶⁹ These ads would prove crucial in countering the multitude of anti-health reform ads, as well as Republican assaults in the media. PhRMA would also contribute to grassroots organizing and other marketing efforts, which would attempt counter the grassroots opposition of conservative groups.¹⁷⁰

¹⁶⁷ Kirkpatrick, “White House Affirms Deal on Drug Cost.”

¹⁶⁸ Cummings, “Wielding Influence in health care fight.”

¹⁶⁹ Wilson, Duff. “Drug Makers to Back Baucus Plan with Ad Dollars.” *Prescriptions*. The New York Times, 12 Sep 2009. Web. 3 May 2011.

¹⁷⁰ Abelson, Reed. “In Health Reform, Boons for Hospitals and Drug Makers.” *The New York Times*. 21 Mar 2010. Web. 3 May 2011.

Hospitals were the next to sit down with the White House and Baucus to negotiate. Hospitals continued to hold significant political influence, especially with rural legislators where local hospitals are one of the district's top employers. "No member of Congress wants to take a vote and then hear that their local hospital is going to close, even if the hospital is wholly inefficient," said one health care lobbyist.¹⁷¹ Nevertheless, the White House was looking for hospitals to absorb some of the cost of health reform by accepting lower government reimbursements, as well as through cost saving innovations such as health information technology. President Obama publically called for \$200 billion dollars in savings from reduced hospital reimbursements, but after negotiations the two sides agreed on \$155 billion.¹⁷² In exchange, the hospitals would benefit from the 30 million newly insured—and paying—customers, which would result in a reduction of the previously unfunded care for the uninsured.¹⁷³ Furthermore, the White House and Baucus had to agree to not pass a robust public plan in which hospital payments were linked to Medicare rates.¹⁷⁴ The hospital groups argued that Medicare rates were driving hospitals out of business because they paid only about 80% of private sector rates, often less than the cost of treatments.¹⁷⁵ "We have an agreement with the White House that I'm very confident will be seen all the way through conference," said Chip Kahn, chief lobbyist for the FAH.¹⁷⁶ Hospital pressure was crucial in persuading Blue Dog Democrats in the House to demand a public option not linked to Medicare rates. Nevertheless, the public option was crucial in gaining a large cost concession—\$155 billion in reduced

¹⁷¹ Cummings, "Wielding Influence in health care fight."

¹⁷² Herszenhorn, David M. "White House and Hospitals are Reported to Be Near Deal." *The New York Times*. 6 July 2009. Web. 3 May 2011.

¹⁷³ Daschle, 183.

¹⁷⁴ Kirkpatrick, David D. "Obama is Taking an Active Role in Talks on Health Care Plan." *The New York Times*. 12 Aug 2009. Web. 3 May 2011.

¹⁷⁵ *Ibid*

¹⁷⁶ *Ibid*

government payments—that covered a significant portion of the cost of health reform.

Furthermore, while the hospital groups did not fund pro-reform ad campaigns the way PhRMA did, it kept another opponent off the air and out of the pocketbooks of anti-reform conservative groups.

The negotiations with AHIP were the most rocky and confrontational. Indeed, the legislation was largely targeted at them, with the Obama Administration and Democrats largely focusing on insurance company abuses, such as cherry-picking of healthy customers and lifetime coverage caps.¹⁷⁷ Despite the natural antagonism, Karen Ignagni, the chief lobbyist for AHIP, argued to her board that the insurers were better off striking a deal with the White House and Congress because reform was likely to happen given the political environment. She argued to the board—which had been on the side of Republicans in nearly every health care debate in the recent past—that insurers could benefit from portions of reform and strike deals to prevent the most radical proposals, like the public option, that they viewed as an “existential threat.”¹⁷⁸ Shortly after the election of President Obama, AHIP released a report highlighting their willingness to support reform that ended denial of coverage for people with pre-existing conditions (guaranteed issue) in exchange for the government mandating that everyone purchase health insurance—including new, young, and healthy customers that would otherwise stay on the sidelines (individual mandate).¹⁷⁹ This acceptance of greater regulation in exchange for additional paying customers became the central pillar of industry support for health reform among insurers.

¹⁷⁷ Alter, 252.

¹⁷⁸ Jacob S. Hacker. Personal Interview. 4 Feb 2011.

¹⁷⁹ “Health Plans Offer Comprehensive Reform Proposal.” *America’s Health Insurance Plans*. 3 Dec 2008. Web. 3 May 2011.

However, a formal agreement among the Senate, White House, and AHIP—like the ones the drug companies and hospitals reached—was never reached. For the early stages of debate, AHIP vocalized support for reform as long as it did not include a public option. As late as August 2009, AHIP spokesman Robert Zirkelbach said insurers supported ending exclusion for pre-existing conditions and rating insurance based on health status or gender, if individuals are mandated to purchase coverage. However, AHIP drew a line in the sand over the public option. “A government-run plan, in any form, is not necessary. It would dismantle employer coverage, and turn back the clock on efforts to improve the quality and safety of patient care, Zirkelbach said.”¹⁸⁰ Even while vocalizing support for reform in general, AHIP would vociferously oppose any inclusion of a public plan.¹⁸¹

Despite early support for reform without a public plan, tensions between the White House and AHIP flared. AHIP became increasingly frustrated with the tendency of the White House and Congressional Democrats to demonize private health insurers. “The vilification strategy isn’t going to get health reform passed,” Ignagni said publicly.¹⁸² Some health lobbyists and insiders argued this fate to be inevitable. “The Democrats needed an antagonist. With drug companies at the table, the insurers were left as the bad boy.”¹⁸³ AHIP was seemingly left out in the cold. Since PhRMA and the hospitals had secured deals against a public plan tied to Medicare rates, they were protected against the outcome that would pose the greatest threat to drive insurers out of business. However, as with many conservative critics of the public option, AHIP was worried

¹⁸⁰ Sussman, Beth. “AHIP: All For Reforms, But Not Government Competition.” *Under the Influence*. National Journal, 20 Aug 2009. Web. 3 May 2011.

¹⁸¹ Hacker, “Road to Somewhere,” 865.

¹⁸² Stone, Peter H. “Health Insurers Funded Chamber Attack Ads.” *Under the Influence*. National Journal, 13 Jan 2010. Web. 3 May 2011.

¹⁸³ Cummings, “Wielding Influence in health care fight.”

a moderate public option would have inherent special advantages over private insurance because of its status as a government sponsored plan.

AHIP began to turn against reform and intensify efforts to kill the public option. However, insurers were worried about the negative press they would encounter if they were to go public in an attempt to block reform. Therefore, AHIP began to quietly funnel money to the Chamber of Commerce, which spent nearly \$100 million in anti-reform advertising and grassroots organizing.¹⁸⁴ Much of this campaign was targeted specifically against the public option, with internet, print, and TV ads proclaiming “Don’t Drag Down Health Care Reform” [by including the public option]. Grassroots rallies and advertisements were targeted at rural, conservative Democrats who were wary of a public plan and reform in general.¹⁸⁵ Later Chamber advertisements were run against reform overall, with \$10-20 million in funding directly from AHIP member companies, such as Aetna, Cigna, Humana, Kaiser Foundation Health Plans, UnitedHealth Group and WellPoint.¹⁸⁶ Even while these monies were being funneled to the Chamber, Ignagni told *The Washington Post* in an October 2009 editorial that AHIP “continued to strongly support reform.”¹⁸⁷

AHIP eventually publicly opposed the final legislation—even without a public option—arguing that the penalties for non-compliance with the individual mandate were insufficient to guarantee that new, young customers would be able to cover the costs of coverage for older, sicker patients that health reform required insurers to cover. This would result in a rise in premiums, insurers argued, making it even more likely young and healthy individuals would

¹⁸⁴ Stone, “Health Insurers Funded Chamber Attack Ads.”

¹⁸⁵ Slajda, Richard. “U.S. Chamber to Launch Campaign Fighting Public Option.” *Talking Points Memo*. 21 July 2009. Web. 3 May 2011.

¹⁸⁶ Stone, “Health Insurers Funded Chamber Attack Ads.”

¹⁸⁷ Stone, “Health Insurers Funded Chamber Attack Ads.”

forego coverage, in exchange for the relatively small fine that might not even be reliably enforced.¹⁸⁸

Despite final opposition, it is nevertheless important to note that private insurers never launched a full-throated attack against reform on the whole. Unlike in 1993, AHIP never adopted the “take-no-prisoners approach” that categorized the 1993 crusade.¹⁸⁹ AHIP was mostly focused on killing the public option, which focused and limited their opposition for much of the debate. \$20 million for Chamber television ads is a fraction of what they could have spent if they went full out against reform from the beginning. One could logically argue the public option made it harder for AHIP to get fully behind reform. That being said, the threat of the public option played a central role in gaining early concessions from insurers, such as willingness to accept guaranteed issue. Indeed, critics of Ignagni’s legislative strategy have criticized her for giving in so early on items such as pre-existing conditions, which led progressive lawmakers to push for additional concessions.¹⁹⁰

THE PUBLIC OPTION AS A BARGAINING CHIP

The most significant role of the public option in the legislative process was to serve as a bargaining chip for the administration. Hacker and proponents of the public option surely did not design the policy with this in mind;—they designed it rather as real and sincere public policy proposal to address issues in the American health care system. Nevertheless, fear of the public option played a crucial role in gaining early concessions from key stakeholders and

¹⁸⁸ Abelson, “In Health Reform, Boons for Hospitals and Drug Makers.”

¹⁸⁹ Hacker, “Road to Somewhere,” 865.

¹⁹⁰ Cummings, “Wielding Influence in health care fight.”

fundamentally shifted the center of legislative debate to one about the role of government as an *insurer*, rather than one about the role of government as a *regulator*. Early on in March 2009, Baucus noted how the public option could be used effectively as bargaining chip:

Essentially, the role [of the public option] is to keep it on the table to encourage the private health insurance industry to move in the direction it knows it should move toward—namely, health insurance reform, which means eliminating pre-existing conditions, guaranteed issue, modified community ratings. It's all those actions that insurance companies must take in order to provide affordable coverage. And the public option helps encourage the private companies to move in that direction, because they're worried...The main purpose is to keep the health insurance feet to the fire.¹⁹¹

Without the threat of the public option out there, the White House and Baucus would not have been able to gain the same extent of early concessions of the stakeholders such as PhRMA and the hospital groups. Without these early concessions, such as the hundreds of billions of financing from and promises of guaranteed issue from insurers, health reform would have never gotten off the ground. Lobbyists involved in the negotiations acknowledged their clients were “worried” about the public option, and that it made for a useful “negotiating ploy.” The thinking among most lobbyists—especially former Congressional staff familiar with legislative strategy, was that it “made sense” from a strategic standpoint to “put [the public option] in the bill, and then negotiate it out, because the bill works without it,” one lobbyist involved in White House-stakeholder negotiations told me.¹⁹²

The public option not only was central in gaining policy concessions, but also as a tool to gain public support for reform among key stakeholders. This support was important in giving political cover to moderate Democrats uneasy about being seen as anti-business. Further, it kept

¹⁹¹ Tumulty, Karen. “Max Baucus and the ‘Public Option.’” *Swampland*. Time, 26 Mar 2009. Web. 3 May 2011.

¹⁹² Anonymous Health Care Lobbyist Interview

potential vocal critics at the table and either funding positive advertisements—or equally important—none at all. Emmanuel, a chief negotiator and legislative strategist for the White House stuck by his industry deals that were damaging from a public relations point of view. “The doctors fought Truman’s Medicare, the hospitals fought Carter’s cost containment, the insurance companies fought children’s health care... The lesson is, you got to get the constituency groups to participate in the reform process.”¹⁹³ The strategic consideration in gaining this “participation” was that the public option did not have the 60 votes anyway, so it was wise to use it as a bargaining chip in the deals. As Hacker concluded in his analysis of the White House’s use of his policy, “the bargains traded avowed industry support for reform in exchange for the White House promising to protect hospitals and drug manufacturers from those who believed that government should play a stronger countervailing role.”¹⁹⁴ This would not have been possible without the public option.

¹⁹³ Alter, 254.

¹⁹⁴ Hacker, “The Road to Somewhere,” 865.

Part 3: The Outside Game

The legislative process of the healthcare debate was covered extensively in the media. The legislative marathon captured the public attention for nearly a full year—a remarkable time period given the propensity of the modern 24/7 news media to move from story to story as the political news cycle shifts to the next big thing. The detailed legislative process of the healthcare bill was front and center on every primetime cable news show and liberal and conservative blog. President Obama’s chief communications advisor who was in charge of overseeing the White House’s messaging on health care commented on the coverage had become like following sports on the nightly SportsCenter. “The coverage was largely about the sport of it, the point scoring—‘Here’s what the Finance Committee is doing’ and ‘Here’s what CBO says.’ It’s a hard thing to manage even if you’re President because a lot of the action is being driven on the Hill [in Congress.]”¹⁹⁵ For a White House looking to capture the historic nature of health care reform, and what it meant for the *American people*, the “process” coverage was distinctly off message.

The public option was the center of the media storm. One healthcare consultant responsible for following the health care debate for stakeholders commented, “Everyone was talking about the public option, not anything else. If it was designed to be a lightning rod that sucked about 20% of the oxygen [in the health care debate], it ended up sucking up 60% of the oxygen.”¹⁹⁶ “Oxygen” is a political communications term used to describe what will be discussed by the political news media. In the days when nightly network news was dominant, political

¹⁹⁵ Alter, 262.

¹⁹⁶ Anonymous Health Care Lobbyist Interview

stories would only receive coverage if the media determined the stories newsworthy. Today with continuous news feeds, including liberal and conservative bloggers, cable news networks, and social networks, there is more time for more things to be covered—this coverage is the “oxygen” of political news. With the intense focus on health care reform, something had to fill the oxygen. The public option became the most discussed element of health reform.

From one perspective, the intense focus on the public option was surprising. While the Obama campaign plan highlighted the creation of a “new national health plan,”¹⁹⁷ the term “public option” was not used in any campaign speech, TV ad, or presidential debate in 2008 by any candidate in either party.¹⁹⁸ This can be attributed to a couple factors. First of all, the collapsing economy was the clear number one issue of the campaign. Second, only Democrats focused on health care during the campaign and the vague campaign rhetoric did not discuss specific policy proposals—like the public option.¹⁹⁹

Once the specific health care policy proposals were presented, it was clear the public option would become a lightning rod. The two main reasons the public option came to dominate the oxygen were that it was *conceptually* simple and it fell along the ideological fault lines that have dominated U.S. health care politics since Franklin Roosevelt. Do you want a larger government role in the health care market or a diminished one? The answer to this question was clear for the ideological bases of each party—*and these individuals are the activists that drive the health care coverage for the partisan media that dominates today’s political news*. Some argue the public option received so much attention because of its ambitious policy goals and

¹⁹⁷ Obama for America, “BARACK OBAMA AND JOE BIDEN’S PLAN TO LOWER HEALTH CARE COSTS AND ENSURE AFFORDABLE, ACCESSIBLE HEALTH COVERAGE FOR ALL.”

¹⁹⁸ Alter, 259.

¹⁹⁹ Hacker interview

potential to drastically remake the health insurance market in America. This argument would be true if the public option being debated in Congress—and, in turn, in the media—was the one robust public option advocates had originally proposed. Indeed, even the most robust public option debated in Congress (one linked to Medicare rates), would still only be available to the uninsured who were not covered through their employer or eligible for Medicaid, SCHIP, or other government insurance programs. The CBO predicted the limited eligibility would result in a public plan with 11-12 million enrollees—a far cry from the predictions of 130 million in Hacker’s original public plan.²⁰⁰ The CBO determined the public option that passed the House would only include 6 million enrollees.²⁰¹

Interestingly, for most of the media debate on the public option, neither side seemed to pay much attention to the fact the public option being debated in Congress would only affect a few million people. Both sides’ grassroots activists were convinced that the public option—even if limited—was a means to an end. For liberals, it was the first step toward what they viewed as the “common-sense” Medicare for all approach. For conservatives, a “Trojan-horse” for a government takeover of the health care system.²⁰² On the fringes of the debate, the irony is, both sides were saying essentially the same thing.

²⁰⁰ Congressional Budget Office. “Preliminary Analysis of House Tri-Committee.” 14 July 2009. Web. 3 May 2011.

²⁰¹ Congressional Budget Office. “Preliminary Analysis of H.R. 3962.”

²⁰² Alter, 258.

THE ACTIVISTS

For liberals and progressives, the public option already represented a compromise.²⁰³ The most ardent backers of the public option on the airwaves were single-payer advocates like Anthony Weiner and former Vermont Governor Howard Dean. The public option was originally sold to the progressive activist base, most of which support single payer, as the compromise plan between a bill that represented just private insurance regulation and full Medicare-for-all single payer. They were told that the public option was the best they could get, and it was a start towards their ultimate goal of single-payer.²⁰⁴ Regardless of how small the public plan was negotiated down to, they refused to give up on what they viewed as the only “real” reform. Fueling most of the liberal base’s thirst for the public option was a deep-seated hatred for insurance companies. When the public option was negotiated away in the Senate and health insurance companies saw their stock prices spike, liberals dug in.²⁰⁵ The deeper message was clear: what is good for insurances companies *cannot* be good for the American people. Further, the progressives didn’t like how the bill would mandate that people buy insurance, but then only give them private insurance options. Liberal groups like the PCCC and Democracy for America (DFA), labor unions like the AFL-CIO, as well as the influential liberal blogs Fire Dog Lake (FDL) and Daily Kos were fixated on the public option. PCCC and FDL had public option “action centers,” and bought advertisements in conservative districts and states pushing moderate

²⁰³ “MSNBC’s O’Donnell: Liberal House Dems ‘already compromised enormously’ by giving up single payer, backing public option.” *Media Matters*. 3 Sep 2009. Web. 3 May 2011.

²⁰⁴ Goldstein, Dana. “The History of the Public Option.” *Tapped*. The American Prospect, 8 Aug 2009. Web. 3 May 2011.

²⁰⁵ Nasiripour, Shahien. “Seeing Public Subsidy (Not Public Option) Investors Flock to Health Insurers.” *The Huffington Post*. 21 Dec 2009. Web. 3 May 2011.

Democrats to support the public option.²⁰⁶ Adam Green (PCCC), Jane Hamsher (FDL), and Markos Moulitsas (Daily Kos) were fixtures on MSNBC primetime shows of liberal hosts Ed Schultz, Keith Olbermann, and Rachel Maddow. Almost all of their conversations focused on the public option. For the liberal base, the public option was the litmus test for an acceptable bill. Anything without the public option—and any Democrat they viewed as not fighting for it—they would oppose.²⁰⁷

For conservatives, the public option was all the proof they needed that the Democrats and Obama were trying to institute a federal government takeover of the entire health care system. They argued that private insurers would not be able to compete with the government, and people would lose their employer based coverage that they liked. Conservatives, like Glenn Beck and Sean Hannity, seized on 2003 comments by then-Illinois State Senator Obama, that he was a “proponent of a single-payer, universal health care system.” They also highlighted comments by Hacker in 2008:

Someone once said to me this [public option] is a ‘Trojan horse’ for single payer. Well, it’s not a Trojan horse, right? It’s just right there. I’m telling you. We’re going to get there. Over time, slowly...but we’ll move away from reliance on employer based health insurance—as we should—but we’ll do it in a way that we’re not going to frighten people into thinking that they’re going to lose their private insurance. We are going to give them a choice of public and private insurance when they’re in the pool and were going to let them keep their private employer based insurance if their employer continues to provide it.²⁰⁸

A video montage of Obama and Hacker’s statements—as well as clip of Rep. Jan Schakowsky (D-IL) saying the public option would lead to single payer—was played on FOX News

²⁰⁶ Alter, 407.

²⁰⁷ Phillips, Kate. “BlogTalk: Progressives, Public Option and Abortion.” *The Caucus*. The New York Times, 19 Mar 2010. Web. 3 May 2011.

²⁰⁸ Hacker, Jacob S. “Fixing America’s Health Care System.” Momentum Conference. Tides Foundation . 21 Jul 2008. Lecture.

repeatedly, especially Beck’s show.²⁰⁹ Tea-Party and other conservative groups—such as FreedomWorks, Tea Party Patriots, Americans for Prosperity, and their subsidiary Patients First—rallied around the public option as the most “dangerous” aspect of reform.²¹⁰²¹¹ The overarching conservative argument was that government was spending too much, doing too much, and not tackling the deficit. They did not seem to find credible the fact that the CBO had ruled the public option would reduce the deficit from \$25 billion to \$110 billion, depending on whether the plan was tied to Medicare rates.²¹² Nevertheless, the public option fit well into the overall message of too much government involvement in healthcare.

THE AMERICAN PEOPLE’S VIEW

The partisan media coverage that dominated the debate, driven as it was by activists on both sides, had an impact on public opinion on the public option. In most public opinion polls, there was slight majority support for the public option among the American people—although in some polls, support was evenly split. The most commonly used question wording was similar to the CNN/Opinion Research Corporation poll, which tracked support for the public option from August 2009 to January 2010:

²⁰⁹ LexisNexis Broadcast Transcript Search. “Jacob Hacker, FOX News.”

²¹⁰ Onorati, Joseph. “OBAMACARE TRANSLATOR: PUBLIC OPTION.” *Freedomworks*. 3 Jun 2009. Web. 3 May 2011.

²¹¹ “Government (‘Public’) Option Would Create a Two-Tiered Medical System.” *Americans for Prosperity*. 20 Aug 2009. Web. 4 May 2011.

²¹² Hunt, Kasie and Billy House. “CBO Estimates Show Public Plan With Higher Savings Rate.”

| <i>CNN/Opinion Research Corporation</i> ²¹³ | | | |
|---|-----------|------------|------------|
| “Now thinking specifically about the health insurance plans available to most Americans, would you favor or oppose creating a public health insurance option administered by the federal government that would compete with plans offered by private health insurance companies?” | | | |
| | Favor (%) | Oppose (%) | Unsure (%) |
| 1/8-10, 2010 | 54 | 46 | 1 |
| 12/2-3, 2009 | 53 | 46 | 1 |
| 11/13-15, 2009 | 56 | 42 | 2 |
| 10/30-11/1, 2009 | 55 | 44 | 1 |
| 10/16-18, 2009 | 61 | 38 | 1 |
| 8/28-31, 2009 | 55 | 41 | 4 |

The above poll shows consistent approval of the public option from a majority of Americans—ranging from a low of 53% to a high of 61%. In considering the question wording, the survey describes the public option as government “administered” not “government-run.” Furthermore, the word “compete” is a positive word that highlights the notion from public option advocates that the reason behind creating the public options is to inject choice into the insurance market. Some conservatives might take issue with this wording, given the fact that they argue that the more aggressive forms of the public option, and maybe others, would lead to a lack of competition, not an increase. Liberals would likely counter by pointing to the CBO scores of the

²¹³ CNN/Opinion Research Corporation Poll. Jan. 8-10, 2010. N=1,021 adults nationwide. MoE ± 3. Data retrieved from PollingReport.com.

public option proposals that were being debated in Congress, which showed such limited enrollment that it would almost certainly not lead to downfall of the private insurance market.

Surveys that specifically highlighted the aspect of “choice” or giving people an “option” consistently polled with slightly higher support than those that did not. The Quinnipiac University question wording—which asks if respondents support “giving people the option of being covered by government insurance...”—scored the highest support for the public option on record, with 69% support in June 2009. However, as the public option got more media attention and became more controversial, support dropped to 61% by October 2009.

When question wording linked the public option with the notion of providing relief to the uninsured, it boosted support for the proposal. The CBS/New York Times poll asks respondents if they supported the “government offering some people who are uninsured the choice of a government-administered health insurance plan.” Support came in at an average of 60% over the months of November and December 2009—well after the public option had received ample media attention. The CBS/New York Times poll also breaks down the results by party identification. Over 80% of Democrats supported the proposal, but only 33% of Republicans—a 47-point gap in support which highlights the decidedly partisan nature of the public option debate. Importantly for public option advocates pushing moderate members of Congress, 59% of independents supported the proposal in December 2009.

| <i>CBS News/New York Times</i> ²¹⁴ | | | |
|--|-----------|------------|------------|
| Would you favor or oppose the government offering some people who are uninsured the choice of a government-administered health insurance plan -- also known as a 'public option' -- that would compete with private health insurance plans?" | | | |
| | Favor (%) | Oppose (%) | Unsure (%) |
| <u>12/4-8, 2009</u> | | | |
| Total | 59 | 29 | 12 |
| Republicans | 33 | 55 | 12 |
| Democrats | 80 | 12 | 8 |
| Independents | 59 | 28 | 13 |
| <u>11/13-16, 2009</u> | | | |
| Total | 61 | 28 | 11 |
| Republicans | 35 | 56 | 9 |
| Democrats | 82 | 8 | 10 |
| Independents | 56 | 30 | 14 |

| <i>Quinnipiac University</i> ²¹⁵ | | | |
|---|-----------|------------|------------|
| "Do you support or oppose giving people the option of being covered by a government health insurance plan that would compete with private plans?" | | | |
| | Favor (%) | Oppose (%) | Unsure (%) |
| 9/29-10/5, 2009 | 61 | 34 | 6 |
| 7/27-8/3, 2009 | 62 | 32 | 6 |
| 6/23-29, 2009 | 69 | 26 | 5 |

²¹⁴ CBS News/New York Times Poll. Dec. 4-8, 2009. N=1,031 adults nationwide. MoE ± 3 (for all adults). Data retrieved from PollingReport.com.

²¹⁵ Quinnipiac University Poll. Sept. 29-Oct. 5, 2009. N=2,630 registered voters nationwide. MoE ± 1.9. Data retrieved from PollingReport.com.

The NBC News/Wall Street Journal poll highlights the importance of the words “choice” and “option” of insurance coverage in determining the public opinion of the American people. When asked if they “favor or oppose creating a public health care plan administered by the federal government” to compete with private insurers the American people are split, or even in slight opposition. However, independent random sampling in the same October 2009 poll shows that 72% of the American people believe it is “extremely” or “quite important” that people are given a “choice of both a public plan administered by the federal government and a private plan for their health insurance.”

| <i>NBC News/Wall Street Journal</i> ²¹⁶ | | | | | | | |
|--|-------------------------|---------------------|------------------------|------------------------|--------------------------|----------------------------|--------------|
| (A) In any health care proposal, how important do you feel it is to give people a choice of both a public plan administered by the federal government and a private plan for their health insurance...Extremely important, quite important, not that important, or not at all important? | | | | | | | |
| | Extremely Important (%) | Quite Important (%) | Important (NET) | Not that important (%) | Not at all important (%) | Not Important (NET) | Not sure (%) |
| October 2009* | 45 | 27 | 72 | 8 | 15 | 23 | 5 |
| September 2009 | 48 | 25 | 73 | 8 | 15 | 23 | 4 |
| June 2009 | 41 | 35 | 76 | 12 | 8 | 20 | 4 |
| (B) Would you favor or oppose creating a public health care plan administered by the federal government that would compete directly with private health insurance companies? | | | | | | | |
| | Favor (%) | Oppose (%) | Not sure (%) | | | | |
| October 2009* | 48 | 42 | 10 | | | | |
| September 2009 | 46 | 48 | 6 | | | | |
| August 2009 | 43 | 47 | 10 | | | | |
| July 2009 | 46 | 44 | 10 | | | | |
| <i>*In the October 2009 survey, question “A” was asked of one-half of the respondents, and Question “B” of the other one-half</i> | | | | | | | |

²¹⁶NBC News/Wall Street Journal Poll conducted by Hart/McInturff. October 22-25, 2009. N=1009 nationwide. MoE +/- 3.1% <http://online.wsj.com/public/resources/documents/wsjnbc-10272009.pdf>

Critics of this poll argue the question wording of the “choice” measure is a so-called “double barrel question” (when two questions are combined into one, making it unclear which question is being answered). In this case, one could strongly oppose the public plan, yet still think it is important to have a choice between the public plan and their private plan—if the public plan were to be instituted.²¹⁷ Nevertheless, there is a clear susceptibility of the American people to framing effects on the public option—that is, varied responses to public opinion inquiries because of assorted question wording. I believe this is caused by a lack of deep understanding of the public option among the American public. A survey by Penn, Schoen and Berland Associates on behalf of the American Association of Retired Persons (AARP) found that only 37% of Americans could correctly identify the proposal from a list of three choices. More than one-quarter of Americans thought the public option was a proposal to “create a national healthcare system like they have in Great Britain,” and 23% admitted to not knowing.²¹⁸

| <i>Penn, Schoen, and Berland Associates, conducted for AARP</i> ²¹⁹ | |
|--|-----|
| “When politicians talk about including a ‘public option’ in healthcare reform, what do you think they mean?” | |
| 8/12-13, 2009 | |
| Creating a government-funded insurance company that competes with existing private insurers to offer health coverage at market rates | 37% |
| Creating a national healthcare system like they have in Great Britain | 26% |
| Creating a network of healthcare cooperatives | 13% |
| Don’t Know | 23% |

²¹⁷ Joyner, James. “Public Option a Loser, Choice a Winner.” *Outside the Beltway*. 21 Aug 2009. Web. 4 May 2011.

²¹⁸ Silver, Nate. “Poll: Most Don’t Know What ‘Public Option’ is—Including Pollsters.” *FiveThirtyEight*. 27 Aug 2009. Web. 4 May 2011.

²¹⁹ Penn, Schoen and Berland Associates. August 12-13, 2009. N=1000 Americans nationwide. Internet Survey. MoE +/-3.1%

http://extras.mnginteractive.com/live/media/site36/2009/0825/20090825_070303_HealthCarePoll.pdf

Similarly, a Vanity Fair/60 Minutes poll found that 66% of Americans would not feel “confident explaining exactly what the public option is to someone who didn’t know.”²²⁰ Given the inherent social desirability bias for this measure (respondents will often lie to appear they know the answer to the question), this number is even more telling. Only 26% of respondents claimed they could confidently explain the public option, even after nearly 6 months of intense media focus on the proposal. Therefore, public option proponents and critics would aim to capitalize on the fickleness of mass public opinion by capturing the most effective language for their respective positions.

THE HOME FRONT: POLITICAL REALITY

Before I turn to messaging on the public option, it is important to consider the political and legislative reality of national public opinion polling. While national support for the public option stood in the slight majority in most polls, what truly mattered for proponents of the public option was winning over a handful of moderate Democratic senators. Simply because most polls indicated that the nation was in slightly in favor of the public option did not mean the politics of the public option were the same in the states of Democratic senators hailing from conservative areas. Senators like Ben Nelson and Blanche Lincoln represented states John McCain carried convincingly.

²²⁰ Klein, Ezra. “Two-thirds of Americans don’t understand the public option.” *The Washington Post*. 7 Dec 2009. Web. 4 May 2011.

The September 2009 Washington Post/ABC News Poll explored this dynamic. The survey asked Americans if they supported the “proposed changes to the health care system being developed by Congress and the Obama Administration,” and broke down respondents into two categories: those who lived in the states represented by the 13 Senate Finance Committee members²²¹ who opposed both public option amendments (one tied to Medicare rates and one not) and those living in states represented by the 8 committee members²²² who supported both amendments.

Among respondents from “public option supporting” states, 54% supported the “changes to the health care system,” while 39% opposed. Among respondents from “public option opposing” states, only 40% supported the Obama/Democratic plan, while 54% opposed it. However, when asked if they would support the rest of the proposed changes, *without* the public option, support among those from public option opposing states jumped to 53% and opposition fell to 38%—representing a 13-point increase in support and a 16-point decrease in opposition. Support among those from public option supporting states, remained the same.

²²¹ Arkansas, Arizona, Idaho, Iowa, Kansas, Kentucky, Maine, Montana, Nevada, North Dakota, Texas, Utah and Wyoming

²²² Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Washington and West Virginia

| <i>Washington Post-ABC News</i> ²²³ | | |
|---|-------------|------------|
| <i>Overall, given what you know about them, would you say you support or oppose the proposed changes to the health care system being developed by Congress and the Obama administration?</i> | | |
| | Support (%) | Oppose (%) |
| All | 46 | 48 |
| Support States | 54 | 39 |
| Oppose States | 40 | 54 |
| <i>Say health care reform does NOT include the option of a government-sponsored health plan - in that case would you support or oppose the rest of the proposed changes to the health care system being developed by Congress and the Obama administration?</i> | | |
| | Support (%) | Oppose (%) |
| All | 50 | 42 |
| Support States | 55 | 38 |
| Oppose States | 53 | 38 |

While moderate senators on the fence about the public option surely had more state specific private polling, these results highlight the tough politics of the public option. Given Republican opposition to the public option, it is not surprising conservative states would oppose the public option. Contrary to the views of progressive activists, moderate Democratic senators were not necessarily siding with corporate health care interests over the views of *their states*. Instead, public opinion in their states was actually in alignment with the positions held by the stakeholders.

²²³ Washington Post/ABC News Poll. September 10-12, 2009. N=1,007 adults nationwide. MoE +/- 3.0%. http://www.washingtonpost.com/wp-srv/politics/polls/postpoll_091309.html?sid=ST2009091400007

MESSAGING

Conservative messaging on the public option—and health care reform in general—was rooted in a detailed memo written by Republican pollster Frank Luntz in March 2009. The memo, titled “The 10 Rules for Stopping the ‘Washington Takeover’ of Healthcare,” was based on aggregate polling results and instant response dial testing among the American people.²²⁴ Luntz is an influential Republican consultant who has an active role in shaping GOP talking points in Congress. Luntz circulated the memo among the offices of Congressional and Senatorial Republicans and instructed the members who were not already using his talking points to get in line. “From today forward, the [messaging] should be used by everyone,” he wrote in his memo.²²⁵

Similar to the findings from the public polling, Luntz concluded he needed to get the attention off of “competition and free markets,” and turn the focus to “bureaucrats” and “Washington.” Luntz argues it is essential to frame health reform along the lines of an intrusive federal government that will decrease the quality of care and decrease access to needed care. The American people are “deathly afraid that a government takeover will lower their quality of care—so they are extremely receptive to the anti-Washington approach. It’s not an *economic* issue. It’s a *bureaucratic* issue,” Luntz writes.²²⁶ For the access argument, he instructs to humanize the problems with single-payer health care systems such as those in Canada or Great Britain. “In countries with government run healthcare, politicians make *your* healthcare

²²⁴ Luntz, Frank. “The Language of Healthcare 2009: The 10 Rules for Stopping the ‘Washington Takeover’ of Healthcare.” April 2009. Web. 4 May 2011. <http://wonkroom.thinkprogress.org/wp-content/uploads/2009/05/frank-luntz-the-language-of-healthcare-20091.pdf>

²²⁵ Luntz, 3.

²²⁶ Luntz, 1.

decisions. *They* decide if you'll get the procedure you need, or if you are disqualified because the treatment is too expensive or because you are too old. We can't have that in America."²²⁷

Luntz does not use the phrase “public option” once in his 28-page memo. While the sections on a “Washington takeover” of healthcare are certainly aimed at countering increased government involvement in the health care system, Luntz does not limit these criticisms simply to proposals for a public plan. Indeed, when there was no longer any public option in the bill, Congressional Republicans continued to use the *exact same* talking points. Following the passage of health care reform—and to this day—Republicans continue to label health care reform as a “Washington takeover.” Nevertheless, inclusion of the public option in proposals throughout 2009, gave initial traction to the “Washington takeover” charge, and once the overall health plan was framed in that way, it became extremely difficult for Democrats to change the narrative. “It used to be a government takeover, but it is not anymore,” is not exactly a winning message.

Republican members of Congress, activists, and the conservative media adopted the Luntz talking points with discipline and consistency. The number two House Republican, Eric Cantor (R-VA) argued that the Democratic plan “may sound good rhetorically, but at the end of the day, we are moving very swiftly towards a Washington-engineered, bureaucratic controlled, healthcare system. And we all know that when the government gets in the middle of anything, the quality can quickly diminish.”²²⁸ Republican House Leader Boehner (R-OH) said “Washington takeover,” five times on a single *Meet the Press* interview.²²⁹

²²⁷ Luntz, 1.

²²⁸ Luntz, 16.

²²⁹ Adair, Bill and Angie Drobnic Holan. “PolitiFact’s Lie of the Year: ‘A government takeover of health care.’” *PolitiFact*. 16 Dec 2010. Web. 4 May 2011.

The phrase “Washington takeover” or “government takeover” was the most widely used Republican talking point, even after health care reform passed without a public option. An analysis by *PolitiFact*, an independent, non-partisan political fact checker owned by the *St. Petersburg Times*, concluded the charge of a Washington/government takeover was used so many times it became unfeasible to numerically count the mentions. The phrase appeared more than 90 times on Boehner’s website, GOPLeader.gov; 8 times in the Republican campaign platform for the 2010 House Elections, “A Pledge to America;” more than 200 times on the Republican National Committee website; as well as in the literature of Conservative groups such as FreedomWorks, the Heritage Foundation and the Cato Institute.²³⁰ In 2010, after the public option had already been dropped from the proposals, the phrase was mentioned 28 times in the *Washington Post*, 77 times in POLITICO, and 79 times on CNN, all of which dwarf in comparison to utterances on FOX News.²³¹

Luntz realized the public option polled well, and sought to redefine the proposal if they were forced to engage it directly in the debate. Luntz advised on framing the proposal as a “government option” rather than a public option. On the August 18, 2009 edition of FOX News’ *Sean Hannity Show*, Luntz went on the air to advise conservatives to call stop calling the proposal a public option. “Are you sure it isn’t a government option? It’s sponsored by the government, it’s paid for by the government. If you call it the public option, the American people are split. If you call it the government option, the public is overwhelmingly against it,” Luntz told an agreeing Hannity. “A great point,” Hannity responded. “And from now on, I am going to

²³⁰ *Ibid*

²³¹ *Ibid*

call it the government option, because that's what it is.”²³² Later in the year, after the public option was included in Reid’s Senate Bill, Bill Sammon, FOX News Vice President and Washington Managing Editor sent out an internal memo, directing the network’s anchors to “please use the term ‘government-run health insurance,’ or, when brevity is a concern, ‘government option,’ whenever possible.”²³³ Sammon admitted the public option was “firmly ensconced in the nation’s lexicon,” and therefore advised anchors to add the qualifier “so-called public option” or “the public option, which is the government-run plan,” when it was not possible to avoid the term. Boehner continued to hammer home the overall Republican message on the public option, despite the naming of the proposal. After Pelosi called the provision a “consumer option,” Boehner responded: “They are worried about it because whether you call it the government option; whether you call it the consumer option; whether you call it a co-op or an opt-out or an opt-in, these are all just terms about their big government takeover of our health-care system.”²³⁴

The cohesiveness of the conservative message operation stands in stark contrast with the mixed messages of Democrats and public option advocates. Conservatives were unified behind a simple message, and the message discipline extended throughout the entire communications circle: from pollsters to conservative activists to members of Congress to the conservative aligned media. Democrats, on the other hand, were struggling to clearly define the public option,

²³² “Luntz births another GOP talking point: It’s a ‘government option’ not a ‘public option.’” *Media Matters*. 19 Aug 2009. Web. 4 May 2011.

²³³ Kurtz, Howard. “How Fox News Spun the Health-Care Debate.” *The Daily Beast*. 9 Dec 2010. Web. 4 May 2011.

²³⁴ *Ibid*

the ideal role and scope of the policy, and whether or not it was essential to the entirety of health reform.

The most commonly used Democratic talking point for public option advocates was that the proposal would be the best way to keep insurance companies honest, as well as increase competition in order to lower costs, improve quality, and retain choice. This talking point was shortened to the “public option” results in more “choice and competition” when a short sound bite was needed.²³⁵ However, while calls for choice and competition were popular, they failed the test that Luntz found critical in finding a successful health care message: *personalize and humanize the proposal*.²³⁶ Democratic messaging focused too much on what the public option would do for the health care *system*, and not enough on what it would mean for the American people. Sometimes, Democrats would connect the public option with the resulting cost savings and premium decreases, but too often public option arguments would diverge into attacks on the insurance industry. This trend was exacerbated by the fact that the most ardent public option defenders were, in fact, single payer supporters. Repeatedly on interviews with either FOX News or MSNBC, single-payer advocates, such as Anthony Weiner, Sen. Bernie Sanders (I-VT) and Howard Dean, would be brought on to defend the public option, only to spend the entire time debating the strengths and weaknesses of private versus public health insurance.²³⁷ Further, Weiner, Dean, and others would often argue that the public option needed to be more “robust” or the viewer would be reminded that while they support the public option, in an ideal world, they were really for single payer. This gave mileage to the conservative argument that the public

²³⁵ Marinucci, Carla. “Pelosi pushes public option for health care.” *San Francisco Chronicle*. 21 Aug 2009. Web. 4 May 2011.

²³⁶ Luntz, 16.

²³⁷ See Anthony Weiner on FOX, September 9th, 2009 and Anthony Weiner on MSNBC on August 18, 2009.

FOX: <http://www.youtube.com/watch?v=ddQiDABXeeE&feature=relmfu> MSNBC:

<http://www.youtube.com/watch?v=wFseWGXCWDE>

option was in fact just a Trojan-horse for single payer.²³⁸ A policy message is intended to bring persuadable voters to your side on a debate, and these discussions far from advertised why Independents and wavering Democrats should support the public option. If the public option were to gain traction among moderates and Independents it would be up to the White House and moderate members of Congress.

THE WHITE HOUSE'S MESSAGE DILEMMA

The House and Senate liberals who were pushing the public option on cable news—whether they were for single payer or not—were not the members who controlled the legislative fate of the public option. Many moderate and conservative Democrats were skeptical about the public option, and they looked to the President for political direction on the controversial policy. The moderates did not want to find themselves to the left of a President who was viewed by most of their constituents as too liberal. Until the President took a clear stance, they would continue to be hesitant to fully commit to the public option.

The White House was in between a rock and hard place on messaging the public option to the public. On one hand, the public option was the single most important aspect of the bill to the progressive activists and liberal members of Congress who were the staunchest advocates for health care reform in general. The progressive caucus of the House had enough votes to kill the entire bill—which they threatened to do if it did not include a public option. Pelosi said she

²³⁸ Alter, 405.

would not include bring a House bill to the floor without some kind of public option.²³⁹ If the White House abandoned the public option early on, they would face a full out revolt on the left. Nevertheless, amidst the heated town hall health care protests of the August 2009 summer Congressional recess, the White House took the plunge and aimed to tamp down the importance of the public option.

The effort occurred over one weekend in mid-August, 2009. First, President Obama said at a town hall in Colorado that “the public option, whether we have it or we don't have it, is not the entirety of health care reform. This is just one sliver of it, one aspect of it.”²⁴⁰ The next day on the Sunday talk shows Health and Human Services Secretary Kathleen Sebelius took questions on the public option. Sebelius’ message was similar to the President’s—the public option was “not the essential element” of health care reform, and noted that the White House was open to other alternatives, such as non-profit insurance cooperatives, to increase choice and competition.²⁴¹ Concurrently, Senator Conrad publically said the public option did not have the votes to pass the Senate.²⁴² Reaction from the progressive base was swift and fierce. Despite White House objections that their message had remained consistent, the progressives viewed the explicit diminishing of the public option as the first step the administration was abandoning the policy. The entire MSNBC primetime line-up led with the story featuring interviews with disgruntled liberal congressman and senators—and continued threats to defeat a bill that did not include the public option.²⁴³ The blog reaction from groups like the PCCC and FDL was

²³⁹ Tedford, Deborah. “Pelosi: Public Option ‘Essential’ To Health Care Bill.” *NPR*. 8 Sep 2009. Web. 4 May 2011.

²⁴⁰ Baram, Marcus. “White House’s Mixed Messages On ‘Public Option.’” *The Huffington Post*. 16 Sep 2009. Web. 4 May 2011.

²⁴¹ *Ibid*

²⁴² Wong, Queenie. “Obama Signals Public Option Could Be Dropped.” *US News and World Report*. 17 Aug 2009. Web. 4 May 2011.

²⁴³ Hamsher, Jane. “Anthony Weiner: No Public Plan Will Cost ‘100 Votes’ In the House.” *Firedoglake*. 17 Aug 2009. Web. 4 May 2011.

unrelenting.²⁴⁴ The White House quickly abandoned the short-lived strategy, and walked back the Sebelius comments within 24 hours, saying that the Secretary had “misspoke” when saying the public option was not an “essential part” of reform.²⁴⁵

At this point, the White House was frustrated with what it viewed as unreasonable dwelling from the left on a policy that just did not have the votes in the Senate to pass. Vice President Biden, who was responsible for shoring up the left flank of the Democratic caucus, continually employed what he called the “don’t bullshit me” argument: “I’ve known you for twenty years and talked health care with you endlessly in the gym, and never once until this year have I heard you mention the words ‘public option.’ Now you’re telling me it’s the most important thing in the world? Please.”²⁴⁶ Jim Messina met with outside progressive groups in an attempt to reason with them. “Eighteen months ago you never heard of a public option and now you’re willing to die in the streets for it?”²⁴⁷

For the progressives to be satisfied, Obama would need to draw a line in the sand and say the bill *had* to have a public option, or he would not sign it. However, the White House had concluded it needed the stakeholders on board, and already had implicitly negotiated away the public option. More importantly, the White House truly did not believe the Senate had the votes to pass the public option. Congressional Democrats could not pass the entire bill through reconciliation, and passing the public option separately through reconciliation was a tough sell with moderates. If Obama came out and went all-in on the public option, the President would risk diminishing the perceived significance of the final reform package if it did not include the

²⁴⁴ Hamsher, Jane. “60 Members of Congress Say ‘No Public Plan, No Conference.’” *Firedoglake*. 17 Aug 2009. Web. 4 May 2011.

²⁴⁵ Ambinder, Marc. “Administration Official: ‘Sebelius Misspoke.’” *The Atlantic*. 16 Aug 2009. Web. 4 May 2011.

²⁴⁶ Alter, 412.

²⁴⁷ Alter, 259.

public option. In other words, if Obama proclaimed the public option as *essential* for health reform, he might not be able to claim the final reform package was in fact “real” reform.

With no clear answer to the public option message dilemma, the White House concluded they had to walk a tight rope: support the public option, but argue it was just *one* method of reaching the desired goal of “choice and competition.” The message had a few components—in contrast with the simple Republican line. First, highlight the lack of competition and choice in insurance markets throughout the country. Second, offer the public option as the preferred vehicle (but not the only one) for increasing choice and competition, as well as keeping insurers honest, which will lead to decreased costs and improved quality. As White House Press Secretary Robert Gibbs argued on a Sunday talk show:

We [need to] inject some choice and competition into the private insurance market. There are places in this country, unfortunately, where if you don't get insurance through your job and you are seeking it on the private insurance market, you don't have any choice but one health insurance company. What the president has said, in order to inject choice and competition, which will drive down costs and improve quality, that people ought to be able to have some competitor in that market. There ought to be a choice that they have. The president has thus far sided with the notion that that can best be done through a public option.²⁴⁸

On one hand, this message is a brilliant political stroke that kept the progressive base from full revolt, while simultaneously keeping the stakeholders at bay by leaving the door open for a bill without a public option. On the other hand, the message did not please anyone. Liberals were still upset the President didn't draw a line in the sand, and stakeholders held lingering fears the public option would end up in the bill somehow. There were two important negative consequences of this message: First, the progressive members of Congress continued to hold out

²⁴⁸ Baram, “White House’s Mixed Messages On ‘Public Option.’”

hope for a public option, resulting in later difficulties whipping liberal votes when the final bill did not contain a public option. Second, conservatives continued to point to the fact that Obama wanted a public plan, which they argued would result in a government takeover of the health care sector. Additionally, stakeholders, especially AHIP, became increasingly frustrated with the President's unwillingness to completely abandon the public option and started to quietly funnel millions towards anti-reform efforts. In these ways, the public option made the effort to pass the most comprehensive bill possible *more difficult*. However, the positive impacts of the public option outweigh these negative forces. Even from a purely communications perspective—where the benefits of the public option are decidedly more mixed than in the legislative process—the public option played an indispensable role as conservative lightning rod which drew attention away from the politically treacherous individual mandate.

THE INDIVIDUAL MANDATE: A BRIEF POLICY HISTORY

If the public option was the most discussed policy in the health care debate, the individual mandate—the requirement that all Americans obtain health insurance coverage—was the most important. Despite some calls by observers and pundits for a smaller health care bill that was politically popular, the reality is that the health care in America is a complicated, intertwined ecosystem that cannot be adjusted in a piecemeal fashion. The individual mandate was the central pillar that held the Obama health care bill together—the bill simply would not have survived without it.

Despite the ferocity of contemporary conservative resistance, the individual mandate was originally a Republican idea. In the late 1980s, Mark Pauly, a conservative health economist at the University of Pennsylvania's Wharton School, led a group of health economists and health policy experts in an effort to come up with a policy for President George H.W. Bush that achieved universal coverage through market mechanisms. Conservatives saw it as a way to ensure universal coverage without burdening employers with mandates. Further, conservatives promoted the idea of "individual responsibility" for health insurance coverage, in an effort to cut down on the free-rider problem of individuals that do not purchase insurance then rely on others to pay their medical bills.²⁴⁹

The conservative health policy community warmed to the idea, with Stuart Butler of the Heritage Foundation first publishing a paper in support of the individual mandate in October 1989. Butler argues that the individual should be responsible for health insurance, not businesses. Further, personal responsibility dictates insurance should be mandatory.

[N]either the federal government nor any state requires all households to protect themselves from the potentially catastrophic costs of a serious accident or illness. Under the Heritage plan, there would be such a requirement... Society does feel a moral obligation to insure that its citizens do not suffer from the unavailability of health care. But on the other hand, each household has the obligation, to the extent it is able, to avoid placing demands on society by protecting itself...A mandate on households certainly would force those with adequate means to obtain insurance protection.²⁵⁰

Over the next four years leading up to the Clinton reform effort, a number of conservative scholarly articles would emerge supporting a similar individual mandate, including Mark Pauly

²⁴⁹ Rovner, Julie. "Republicans Spurn Once-Favored Health Mandate." *NPR*. 15 Feb 2010. Web. 4 May 2011.

²⁵⁰ Butler, Stuart M. "Assuring Affordable Health Care for All Americans." *The Heritage Foundation*. 1989. Web. 4 May 2011.

http://healthcarereform.procon.org/sourcefiles/1989_assuring_affordable_health_care_for_all_americans.pdf

(Health Affairs, 1991), Stuart Butler (Heritage Foundation, 1992), Robert Moffitt (Health Affairs, 1994), and Tom Miller (Cato Institute, 1994). These were the same individuals and organizations who would later oppose the public option.

During the Clinton health reform push, many Congressional Republicans supported the individual mandate. Senate Bill 1770—which called for an individual mandate—was introduced in November 1993, with 18 Republican co-sponsors. Four of these Republican senators—Sens. Orin Hatch (R-UT), Robert Bennet (R-UT), Christopher Bond (R-MO), and Grassley—remained in the senate during the 2009-2010 health care debate, and all reversed their earlier support of the individual mandate.²⁵¹

The partisan fault lines on the individual mandate continue to be dynamic and unpredictable. The individual mandate had always been viewed with skepticism from many on the left. Well before discussion of a public option, progressives viewed the individual mandate as a bad policy that forced individuals to purchase health insurance from under-regulated, for profit insurance companies—in many cases, insurance policies people could not afford. This is one reason why the progressive community thought the public option was so important. They could not support a plan that forced Americans to buy insurance from the very companies they thought were the problem.²⁵²

The liberal divide on the individual mandate was never more evident than in the 2008 Democratic presidential primary. Then-Senator Hillary Clinton (D-NY) supported the individual

²⁵¹ Chafee, John H. "Health Equity and Access Reform Today Act (S.B. 1770)." 103rd Congress. 23 Nov 1993. Web. 4 May 2011. http://healthcarereform.procon.org/sourcefiles/senate_bill_1770_1993.pdf

²⁵² Walker, Jon. "The Weird 'Liberal' Obsession with Defending the Individual Mandate." *Firedoglake*. 21 Dec 2010. Web. 4 May 2011.

mandate as the only way to ensure (near) universal coverage.²⁵³ However, Obama did not include the mandate in his health care plan. According to David Cutler, a Harvard University health economist who advised the Obama campaign, “[Obama] thought it was pushing people too hard—‘I’m going to make you buy something, but I can’t show it to you, and I can’t tell you how much it’s going to cost you,’” Cutler recalled the candidate telling him.²⁵⁴ Obama believed affordability was the problem, not the lack of a mandate.

Political calculations also played an important role. Obama viewed the individual mandate as having “big brother overtones,” according to another campaign aide.²⁵⁵ When Clinton attacked Obama’s plan for not reaching universal coverage, Obama effectively hit back by asking Clinton in numerous debates what she planned to do if people did not follow the mandate. “If they cannot afford it, then the question is, what are you going to do about it? Are you going to fine them? Are you going to garnish their wages?”²⁵⁶

Recent conservative contempt for the individual mandate has grown largely out of the anti-government fervor within the Tea Party movement.²⁵⁷ Establishment Republicans have supported the individual mandate since its inception, and Republican Governor Mitt Romney passed a health care plan in Massachusetts that included an individual mandate in 2006. However, conservatives have increasingly viewed the individual mandate as a government intrusion on personal freedom, and more importantly, as an unconstitutional policy. Senator McConnell, as well as most Congressional and Senatorial Republicans, has stated they believed the individual mandate is unconstitutional. In a letter voicing his opposition, McConnell

²⁵³ Daschle, 78.

²⁵⁴ Daschle, 79.

²⁵⁵ Daschle, 73.

²⁵⁶ Daschle, 80.

²⁵⁷ Stolberg, Sheryl Gay and Kevin Sack. “Obama Backs Easing Health Law Rules for States.” *The New York Times*. 28 Feb 2011. Web. 4 May 2011.

commented: “For the first time, the Congress is not regulating an economic activity in which its citizens have chosen to engage, but rather is mandating that its citizens engage in economic activity—that they purchase a particular product—to begin with, and it would allow the federal government to punish those who make a different choice,” McConnell wrote. “If the individual mandate is upheld [in the courts], there will no longer be any meaningful limit on Congress’s power to regulate its citizens under the Commerce Clause.”²⁵⁸ Twenty Republican state attorneys general have filed lawsuits alleging the individual mandate is unconstitutional.²⁵⁹

THE INDIVIDUAL MANDATE, PUBLIC OPTION, AND HEALTH REFORM

With political opposition from strains of both parties, it is not surprising that the individual mandate is unpopular with the American people. Furthermore, as the individual mandate has received greater media scrutiny—largely coinciding with the death of the public option—opposition has steadily increased. A CNN/Opinion Research Poll found support for the individual mandate split in late 2009, but by December 2010, 60% opposed the provision.

²⁵⁸ Terris, Ben. “Boehner Files Amicus Brief Against Individual Mandate.” *National Journal*. 17 Nov 2010. Web. 4 May 2011.

²⁵⁹ At the point of this writing, Federal lawsuits against the individual mandate have had mixed results. Federal judges appointed by Republicans have shot down the individual mandate as unconstitutional, while judges appointed by Democrats have upheld the law. The individual mandate is on track to be reviewed by the Supreme Court.

*CNN/Opinion Research Corporation*²⁶⁰

“Now here are a few provisions in the health care bill. Please tell me whether you favor or oppose...

“Requiring all Americans who do not have health insurance to get it”

| | Favor (%) | Oppose (%) | Unsure (%) |
|----------------|-----------|------------|------------|
| 12/17-19, 2010 | 38 | 60 | 2 |
| 8/6-10, 2010 | 44 | 56 | 1 |
| 2/12-15, 2010 | 45 | 53 | 1 |
| 11/13-15, 2009 | 49 | 49 | 1 |

Throughout the midterm election campaign in 2010, and into 2011, Conservatives have increasingly focused on the individual mandate as being unconstitutional and an example of federal government overreach. Republicans—who were gaining traction with their message that the Democrats’ health care plan amounted to a “government takeover,”—now pointed to the individual mandate as the chief evidence, with the public option no longer in the bill. For example, in March 2010, when the final bill was set to pass Congress—without a public option—Boehner labeled the bill a “job-killing government takeover of health care...that [levies] \$17 billion in new taxes on Americans who do not comply with the individual mandate.”²⁶¹

Republicans, in their efforts to repeal the entire health care law, have principally focused on the individual mandate as the easiest way to unravel the entire law by striking at the central

²⁶⁰ CNN/Opinion Research Corporation Poll. Dec. 17-19, 2010. N=1,008 adults nationwide. MoE ± 3. Data retrieved from PollingReport.com.

²⁶¹ Boehner, John. “10 Facts Every American Should Know About Democrats’ Final Government Takeover of Health Care.” *John Boehner House Website Blog*. 19 Mar 2010. Web. 4 May 2011. <http://www.johnboehner.house.gov/News/DocumentSingle.aspx?DocumentID=177141>

provision that holds the bill together.²⁶² Of all the provisions in the law, the individual mandate is increasingly the least popular among the American people. A March 2011 Kaiser Family Foundation Poll, found that two-thirds of the American people think the individual mandate should be repealed.

| <i>Kaiser Family Foundation Health Tracking Poll</i> ²⁶³ | | | | |
|---|-----------|-----------|------------------------------|------------|
| “I’m going to read you several elements of the health reform law. For each, please tell me if you think lawmakers should keep it or repeal it...” (Randomize order) | | | | |
| | Keep (%) | Repeal | Keep but make changes (VOL.) | Don’t Know |
| 3/8-13, 2011 | | | | |
| The law will require nearly all Americans to have health insurance or else pay a fine | 27 | 67 | 2 | 3 |
| The law will prohibit insurance companies from denying coverage because of a person’s medical history or health condition | 74 | 22 | 1 | 3 |
| The law gradually closes the Medicare prescription drug “doughnut hole” or coverage gap so seniors will no longer be required to pay the full cost of their medications when they reach the gap | 76 | 19 | 1 | 4 |
| The law will increase the Medicare payroll tax on earnings for upper income Americans | 58 | 36 | 2 | 5 |
| The law provides tax credits to small businesses that offer coverage to their employees | 82 | 15 | 1 | 3 |
| The law will provide financial help to low and moderate income Americans who don’t get insurance through their jobs to help them purchase coverage | 72 | 24 | 2 | 2 |

The unpopularity of the individual mandate posed a major threat to the passage of a comprehensive health care reform bill. The guarantee of millions of new, young, healthy, and paying customers was the only way health insurers would be willing to accept greater regulation, such as guaranteed issue. If healthy, young people were allowed to sit on the sidelines with the assurance they would be guaranteed coverage when they got sick, insurance companies would be left insuring an older, sicker population. This adverse selection would force insurers to raise

²⁶² Raju, Manu. “A new Dem threat to health care law.” *POLITICO*. 7 Feb 2011. Web. 4 May 2011.

²⁶³ Kaiser Family Foundation Health Tracking Poll. Mar. 8-13, 2011. N=1202 adults nationwide. MoE +/- 3%. <http://facts.kff.org/chart.aspx?ch=1687>

premiums on everyone, further driving more healthy people out of the insurance pool. The CBO predicted the same bill without an individual mandate would cause non-group market premiums to increase 15-20%, while a study by MIT health economist Jonathon Gruber concluded premiums would increase by 27%.²⁶⁴ In addition, hospitals and drug companies would not contribute financing to the health care bill, without the promise of the 30 million or so new customers in exchange. In short, stakeholders would not have accepted reform without an individual mandate—rather; they would have fought tooth and nail to stop the bill. The combination of strong stakeholder opposition and politically unpopular CBO forecasts on rising premiums (because of the adverse selection) would have likely been enough to compel moderate Democrats to oppose the bill.

In order to protect the politically popular elements of reform during the legislative process—such as guaranteed issue, closing the Medicare doughnut hole, and subsidies for lower income individuals to purchase insurance—the individual mandate needed to be preserved. That’s where the public option comes in. The public option, which was supported by a majority of the American people, served as a conservative lightning rod that took the attention off of the less popular individual mandate. The public option was not designed for this purpose, but in the end, it was the most important role the policy played and it likely saved health care reform. Throughout the legislative process, nearly all of the conservative energy and oxygen went towards opposing the public option, rather than focusing on the unpopular individual mandate. With large elements of the political left and right opposing the individual mandate, there would not have been enough defenders of the mandate in the center to save the central provision of the

²⁶⁴ Gruber, Jonathan. “Health Care Reform without the Individual Mandate.” *Center for American Progress*. Feb 2011. Web. 4 May 2011.

bill. In reality, stakeholders were the chief proponents of a strong individual mandate, but their lobbying would only get them so far. They needed the support from members of Congress.

With increased conservative attention on the individual mandate following the passage of the bill—largely fueled by the growing opposition of the American people to the provision—moderate politicians have begun to respond. In February 2011, four moderate Senate Democrats announced they were looking for ways to scale back the individual mandate. Three of these Senators voted for the individual mandate as part of the health care bill: Sens. Nelson, Claire McCaskill (D-MO), and Jon Tester (D-MN). All three are up for re-election in 2012 in conservative states where the mandate is unpopular.²⁶⁵ One could argue that coming out against the individual mandate now is just an attempt to position themselves as independent from Democratic leaders in an election year, with no real policy consequences. However, I would argue that these Senators would not have voted for a bill that included an individual mandate if the provision had been attacked by conservatives all throughout 2009, rather than 2010. Further, if the individual mandate had been the key debate during the legislative process, moderate Democrats up for re-election in 2010 would likely have abandoned the provision. Sen. Lincoln, for example, would likely have turned against the less popular individual mandate—as she did with the relatively more popular public option—in attempt to show her independence and save her job. Even President Obama, who is up for reelection 2012, has given into political pressure to back away from a strong mandate. In late February 2011, Obama announced he was willing to allow states to acquire waivers from enforcing the mandate as soon as it went into effect in 2014, but only if they could find another way to expand coverage without increasing health care

²⁶⁵ Raju, “A new Dem threat to health care law.” *POLITICO*.

costs.²⁶⁶ Of course, if there were an easy way to do expand coverage and lower costs without the mandate, Congress would have done it. The largely political move highlights the hesitance of any politician to embrace the mandate, despite its criticalness from a policy perspective.

If the public option had not been the center of the health care debate during the legislative process, the individual mandate would not have survived, which, in turn, would have prevented a health care bill as comprehensive as the Affordable Care Act (ACA)—if a bill passed at all. Gruber’s analysis of the two most discussed alternatives to the individual mandate—automatic enrollment and late enrollment penalties²⁶⁷—conclude that the substitute plans result in less Americans gaining coverage and higher premiums.²⁶⁸ In the interconnected ecosystem that is American healthcare, the reforms in the ACA can be effective without the public option; they cannot without the individual mandate.

²⁶⁶ Stolberg and Sack, “Obama Backs Easing Health Law Rules for States.”

²⁶⁷ So-called “auto-enrollment” automatically places individuals into an insurance plan, but allows them to opt-out if they wish. This is also called a “soft-mandate” because it forces people to take action to avoid insurance coverage. Late-enrollment penalties is a system where enrollment in an insurance plan would be voluntary, but a penalty would be levied if an individual enrolled after a set deadline. Late enrollment penalties were used for the Medicare Part D prescription plan. Late enrollment could face similar legal, political, and practical challenges that plague the individual mandate.

²⁶⁸ Gruber, 1.

Conclusion

The conventional wisdom among health care politics observers is that the public option was a controversial policy that created an ideological gulf between the parties and prevented bipartisan compromise on health reform. Further, the argument goes, the public option drove away Republican moderates and made it harder for liberals to come along in the end when the public option was not in the final bill.²⁶⁹ Legislative strategists point to the moment when Reid inserted the public option in his Senate bill, despite lacking the necessary votes, as evidence the public option had simply taken on a symbolic role that was impeding the progress of reform.²⁷⁰ “This whole thing could have been done by Thanksgiving if we had been willing to make the Fire Dog Lake crowd very angry,” commented one senior Democratic Senate aide.²⁷¹ Additionally, all the progressive energy that went into fighting for a moderate public option that would have been limited to just a few million people, could have been directed towards achieving higher impact reforms, such as increased subsidies for low-income individuals.²⁷² Finally, those who believe the public option was not helpful for reform, argue that the policy diminished the historic nature of the reforms that actually did end up passing, making them seem less of an accomplishment.²⁷³

These negative effects of the public option are substantial and did pose serious threats to health reform. Nevertheless, in the Obama Administration’s and Congressional Democrats’

²⁶⁹ Anonymous Health Care Lobbyist Interview

²⁷⁰ Ibid

²⁷¹ Alter, 410.

²⁷² Klein, Ezra. “Has the public-option fight been good for health-care reform?” *The Washington Post*. 3 Nov 2009. Web. 4 May 2011.

²⁷³ Alter, 259.

mission to pass the most comprehensive and effective health care bill possible—as defined by expanding coverage, lowering costs, improving quality, and reigning in insurance company abuses—the positive impacts of the public option outweighed the negative effects the proposal had on the health reform effort.

From a legislative point of view, the public option was traded away for significant policy achievements that likely would not have been in the bill otherwise—provisions that arguably impact more Americans than a moderate, enrollment-restricted public plan. Concessions gained from the public option include: the national non-profit plans administered by the OPM, which are just like the plans federal employees and members of Congress receive; state-based insurance cooperatives, the requirement that insurers spend 85% of the premiums they receive on clinical services (or pay a rebate to their customers), and increased funding for strengthened insurance premium rate reviews.

The public option was successfully used as a bargaining chip in negotiations with stakeholders. Health care reform cost nearly a trillion dollars, and to finance the goals of expanding coverage and lowering costs, the White House and Congressional Democrats would need to obtain financing pledges from industry groups. The public option was essential in achieving the deals with drug companies and hospitals, which guaranteed \$235 billion towards paying for health reform. The deals also resulted in \$150 million dollars in pro-reform TV advertisements. The public option also shifted the frame of the debate with insurers to an environment where the debate was over the role of government as an insurer, rather than the role of government as a regulator. This allowed for health reformers to achieve private insurance reforms, like guaranteed issue and the elimination of lifetime spending caps, without spending much political capital. While deals between the White House and stakeholders could have

occurred without the existence of the public option, it would likely have been harder to exact meaningful concessions from the stakeholders without the presence of a bargaining chip that they viewed as a serious threat.

Concurrently, the public option served as a useful lightning rod for the conservative base's attacks on health reform. This conclusion is based on the presumption that conservatives and Republicans would have equally attacked a health care bill that never contained a public option. The events that have occurred since the passing of health reform without a public option have largely confirmed this presumption. Republicans have continued to oppose health reform, still labeling it a government takeover of healthcare despite the lack of a public option. Republicans have stated they believed the ACA is unconstitutional—pointing to the individual mandate—and they repealed the entire ACA when they took over the House of Representatives in 2011.²⁷⁴ When repeal stalled in the Democratic-controlled Senate, the Republicans pledged to block funding for the implementation of the health care law. Clearly, Republicans do not support health care reform without a public option, and there is no reason to believe they would have supported a bill during the legislative process even if the public option was never discussed.

Since the death of the public option in the Senate, conservatives have focused their attacks on the individual mandate. The individual mandate is unpopular with the majority of the American people and would not have survived the consistent attacks that it would have been subjected to if the public option had not been around to absorb the oxygen. The relatively popular public option allowed the individual mandate to fly under the radar during the majority of the legislative process, ensuring its survival. Since the public option ceased being the most

²⁷⁴ Herszenhorn, David and Robert Pear. "House Votes for Repeal of Health Law in Symbolic Act." *The New York Times*. 19 Jan 2011. Web. 4 May 2011.

discussed aspect of reform, support for the individual mandate has dropped significantly, and moderate Democratic senators and the White House have responded by distancing themselves from the policy. Without the individual mandate, private insurers would be forced to raise premiums on everyone to survive in a market environment with guaranteed issue—yet no mandate. Further, the expansion of health insurance coverage would be reduced. If the mandate had to be removed from the bill, the deals that were reached between the White House and stakeholders would have been off and financing for reform would have collapsed. The individual mandate was the central pillar of the ACA, and the public option was its protection. Without the public option, moderate members in both legislative chambers would have lost the political will to fight for the unpopular individual mandate, and any health reform bill nearly as wide-ranging as the ACA would have been defeated.

THE FUTURE OF THE PUBLIC OPTION

The public option is a legitimate policy proposal to control costs and inject competition into the insurance market. It was not designed as a legislative strategy tool to assist in the passing of health reform—despite its clear effectiveness in that role. A national public option will likely not be a viable political option in the near future, given the current political environment, and the unlikelihood of another large scale health care debate anytime soon. However, the public option was the most effective tool for cost control. If the ACA does not succeed in controlling costs, the

public will demand alternatives to private insurers and look for new methods to hold down costs—especially when the government mandates the purchase of health insurance.²⁷⁵

Another avenue for the implementation of the public option will be through state innovation waivers. President Obama has backed a bill that would allow states to obtain innovation waivers in 2014, rather than the currently scheduled 2017.²⁷⁶ In selling the proposal, Administration officials have privately argued to progressives that the innovation waivers will allow states to implement public options in their states.²⁷⁷ One of the challenges of enacting a national public option was the lack of examples of the effectiveness of the public option on a state level. If a public option works well in a state, it may give proponents the evidence they need to push Congress in that direction.

LESSONS LEARNED

The public option debate intertwined the three central pillars of legislative strategy and policy making: public policy, the “inside game” of legislative strategy, and the “outside game” of messaging and public opinion. As the public option morphed from an academic proposal to a legislative initiative to a cable news talking point, it impacted the larger debate in ways that its creators never envisioned. It is difficult to predict how academic policy proposals will evolve as they move into the legislative process and become subjected to political messaging. The strategy

²⁷⁵ Daschle, 309.

²⁷⁶ Haberkorn, Jennifer. “President Obama backs proposes revision to health law.” *POLITICO*. 28 Feb 2011. Web. 4 May 2011.

²⁷⁷ Smith, Ben. “On call, officials stress public options in health care shift.” *Ben Smith*. *POLITICO*, 28 Feb 2011. Web. 4 May 2011.

of inserting a policy proposal for the implicit or explicit purpose of using it as a bargaining chip and communications lightning rod is fraught with risk—and likely bound to fail more times than succeed. The political and strategic conditions around the health care debate of 2009-2010 were unique, and legislative strategists should take caution in attempting to introduce a policy that is designed to play a public option-like role. Unintentional consequences are hard to predict and usually not meant to be replicated.