

Group of 15 State AGs Now Oppose Health Bill on Constitutional Grounds Copyright 2010 A.M. Best Company, Inc. All Rights Reserved BestWire

January 13, 2010 Wednesday 04:42 PM EST

645 words

Group of 15 State AGs Now Oppose Health Bill on Constitutional Grounds

Jesse A Hamilton

WASHINGTON

A constitutional opposition to a specific point in the latest version of the health care reform bill in Congress now includes attorneys general from 14 states and a U.S. territory.

The chief legal officials from those states argue that a provision specifically helping Nebraskans' ability to afford Medicaid unfairly treats other states. The Nebraska provision was a final maneuver leading to support of the Senate bill from its 60th necessary vote -- Sen. Ben Nelson, D-Neb.

In response to encouragement from South Carolina's Republican senators, Attorney General Henry McMaster examined the issue and led an effort to gather other attorneys general to oppose the Senate's health bill on constitutional grounds. "The Constitution is very broad in giving spending power to the Congress," McMaster said, but "the spending cannot be arbitrary or capricious." He argues that making the rest of the states pay part of Nebraska's share is arbitrary and capricious. About the deal for Nelson's vote, McMaster said, "There was no misunderstanding at all. ... That's what was necessary to get Sen. Ben Nelson's vote. That is not a reason recognized by the United States Constitution."

In a letter to the speaker of the House and the majority leader of the Senate -- originally from 13 attorneys general -- they wrote, "As chief legal officers of our states we are contemplating a legal challenge to this provision and we ask you to take action to render this challenge unnecessary by striking that provision."

At a press conference at the National Press Club in Washington, D.C., McMaster, who is running for governor in South Carolina, spoke against what he called the "Cornhusker kickback," saying it's "a symbol of the excesses of a culture of corruption" in Congress. When asked whether he would support the bill if the provision were taken out, McMaster answered, "an emphatic no."

The attorney general said he had a short conversation with Nelson over the phone about the opposition, and Nelson told him that he never asked his state to be singled out and that he hoped other states would receive the same benefit.

Nelson ran a television ad during a recent football game explaining to constituents in Nebraska that he worked hard to improve the bill before agreeing to pass it. And in a Jan. 10 statement

about his role, he said, "I accepted the Nebraska provision not for my vote but to fix the unfunded Medicaid mandate for all states in the final health reform bill. I am aggressively seeking an opt-out or full funding for all states."

The original letter was signed by 13 Republican attorneys general from South Carolina, Washington, Michigan, Texas, Colorado, Alabama, North Dakota, Virginia, Pennsylvania, Utah, Florida, Idaho and South Dakota. McMaster said two others -- Democrats -- have joined: from Oklahoma and American Samoa.

One who hasn't signed on, Attorney General Jack Conway from Kentucky, wrote in a recent letter to a lawmaker in his state that he finds the Nebraska provision "distasteful" and "fundamentally unfair," but the Democrat argues it's not yet his business. "As this legislation is not yet passed, it would be wasteful of me to utilize the limited (and declining) resources of this office on an investigation without jurisdiction or on a court challenge that is not yet ripe for consideration."

The House and Senate bills must still be merged before the chambers can vote on the unified final version.

Both version of the bill include another provision that is being called potentially unconstitutional by some: the individual mandate requiring people purchase coverage -- a provision that the health insurance industry sees as it's central requirement for allowing systemic changes to work. "This is taking the federal government into a completely new area," McMaster said.

(Jesse A. Hamilton, Washington bureau manager: Jesse.Hamilton@ambest.com)

January 14, 2010

**Copyright © 2010 LexisNexis, a division of Reed Elsevier Inc. All Rights Reserved.
Terms and Conditions Privacy Policy**