

Senate rules could pose hurdles for vaccine funds

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WASHINGTON — Progressive Democrats in the Senate are hoping to use a streamlined process that needs just 50 votes to approve a Covid-19 relief package that includes billions in new funding for vaccines and other supplies. But some experts are already casting doubt on that plan.

Some Democrats, including incoming Senate Budget Committee Chair Bernie Sanders (I-Vt.), are pushing for President Biden to give up working with Republicans and pass his \$1.9 trillion stimulus plan using a process that would allow Democrats to pass it on a party-line vote. But the maneuver comes with many restrictions, and the public health funding might not pass muster. Biden wants \$20 billion for a national vaccination program; \$30 billion for purchasing supplies and protective gear; and \$50 billion for a scaled-up diagnostic testing program.

STAT spoke with nine current and former congressional staffers and budgetary experts, and they were about evenly divided on whether Democrats could move the public health funds through the streamlined process. None of them were definitively sure.

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“There isn’t a clear answer in the historical record, and the Senate parliamentarian doesn’t put out a road map,” Gordon Gray, the director of fiscal policy at the conservative American Action Forum and former Senate Budget Committee aide, told STAT in an interview.

Congress is allowed to use a technical process called budget reconciliation to pass legislation with only 50 votes in the Senate instead of the usual 60. For most of the time the process has existed, it has been used for tax and debt limit policy and entitlement spending, or programs such as Medicare and Medicaid that are funded regardless of whether Congress reaches an annual spending deal.

Some experts say that Democrats could fit public health funding into that framework. But others say Biden’s proposed funding for vaccine distribution, protective gear, and Covid-19 testing may fall in a different category that Congress controls through spending bills every year. For example, lawmakers passed more than \$8 billion for federal and state vaccine distribution support in a December spending bill.

“If they want to straight up spend money, they are essentially trying to turn an emergency appropriations bill into a reconciliation bill. There’s going to be disagreement about whether they can do that,” said Rodney Whitlock, a former longtime Senate Finance Committee aide and McDermott+Consulting vice president.

It’s impossible to predict exactly how Congress’ procedural referee would view any certain policy ahead of time. How the policy is drafted will also be important to how it will be categorized.

So far, Biden has seemed to favor bipartisan negotiation, but his stimulus plan had a lukewarm reception among moderate senators. Democrats would have to decide whether to move forward on a bipartisan basis quickly if they want to meet a mid-March deadline related to unemployment insurance.

William Hoagland, a senior vice president at the Bipartisan Policy Center and former Senate staffer who worked on budget issues, said the public health funds seem to be the type of spending that may not qualify for reconciliation. Hoagland said he would advise lawmakers to divide Biden's package up into two parts — a bipartisan bill with public health funding, and a reconciliation package with the leftovers.

“We have got an emergency,” Hoagland said. “Let's compromise and take the \$1.9 trillion bill, pull out that with which Republicans will agree, and get the vaccine money out there as quickly as possible.”

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Rules governing the process don't explicitly ban the budget reconciliation process from being used for spending provisions. Richard Kogan, a senior fellow at the Center on Budget and Policy Priorities and former House Budget Committee aide, said he thinks Democrats could follow the law by funneling funds directly through committees with authority over public health.

House Appropriations Chair Rosa DeLauro (D-Conn.) said funding for vaccinations, testing, and treatment is essential to combating Covid-19, and that House Democrats are “exploring every avenue to get robust funding enacted.”

However, the Senate in recent years has interpreted the rules to practically mean that spending policy should happen separately from budget reconciliation.

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Molly Reynolds, a senior fellow at the Brookings Institution studying congressional procedure and its impact on policy, said the common practice could make it more difficult for Democrats to use the process for spending.

“There are formal written rules in the Senate, and then there are precedents that fill in the gaps on what the rules don't speak to specifically,” Reynolds said.

Spending like the kind Democrats may be eyeing for vaccine funds has been included in budget reconciliation processes before. For example, Congress in the mid-2000s topped up a program to provide heating assistance for low-income families. It didn't produce definitive precedent though, because no senator challenged it and the Senate's procedural referee didn't have to issue a ruling. If no senator objects, the rules aren't self-enforcing.

Though experts with roots on both sides of the aisle came to different conclusions about how money for vaccine distribution and other public health priorities could be worked into the budget reconciliation process, they agreed that the only way to know for sure is if Democrats test it.

So far, allocating more public health funding for vaccine distribution has wide bipartisan support, but congressional dynamics are polarized enough now that it's likely some lawmakers would use excessive procedural challenges to try to delay a package, said Tamara Fucile, a senior adviser for government affairs at the left-leaning Center on Budget and Policy Priorities.

"It's hard to imagine there isn't a group of senators who throw up challenges to everything," Fucile said.

A senior House GOP aide said the role of reconciliation is to make changes to mandatory spending, revenue levels, and the debt limit, and accused Democrats of being willing to "bend and break that process" to pursue their agenda.

Whether Democrats decide to pursue stimulus policy through budget reconciliation will have consequences for how programs are structured and what has to be left out, Whitlock said.

"The challenge is that reconciliation comes with a set of rules that require you to write the legislation in ways you wouldn't have to otherwise. For some policies, it would make it impossible," Whitlock said.

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