



Who Wins if Republicans Repeal Health Reform Law?

by Dan Diamond

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Two years after President Obama took office with a pledge to overhaul the nation's health care system, and nearly 10 months after the White House-backed bill became law, well-worn talking points about the overhaul are getting another workout this month.

Pushing to repeal the law, Republicans say the overhaul is a totalitarian government overreach with budget-busting consequences. Counterpunching with a flurry of White House-backed reports, Democrats defend the law as an economic fix full of patient protections.

The charged political atmosphere has renewed -- at least temporarily -- the nation's health care debate, the volume of which had steadily receded since the reform bill passed last March.

But there's a major difference from the 2009-2010 reform fight: Industry stakeholders largely are sitting on the sideline this time. Moreover, many are wishing away the GOP's repeal because it wouldn't benefit the health care sector.

"I see [the repeal effort] as ideologically driven rather than industry-driven," Anthony Wright of Health Access told *California Healthline*.

Rising Political Momentum, Flagging Industry Support for Repeal

Acknowledging they face an uphill battle, Republicans have promised a two-year repeal campaign beginning with a symbolic House vote on Wednesday. The party also is touting a letter -- signed by 200 economists and health care experts -- charging that the overhaul will hamper job growth and damage the economy. After an influx of new GOP governors this month, more than half of the nation's states now are suing the government over the law's constitutionality.

"Replacing 'ObamaCare' is not something we can accomplish overnight," according to Rep. Fred Upton (R-Mich.), the new House Energy and Commerce Committee chair. "But mark my words, we will get this done."

Republicans' anti-reform path may be out of step with public opinion. A recent *Associated Press*-GFK poll found that the percentage of U.S. residents who strongly oppose the federal health reform law has declined to 30%, the lowest rate since September 2009. Meanwhile, just one in

four respondents said they want the law struck down, a significant change from a Kaiser Family Foundation review in October 2010 that found surveyed Americans generally supported repeal.

Even leading insurers -- which the White House once painted as the villains who stood to lose the most from health reform -- largely are opposed to rolling back the overhaul. According to Cigna CEO David Cordani, it isn't "in our society's best interest to expend energy in repealing the law ... [after we] expended over a year of sweat equity around the formation of it." Many other insurers have declined to comment.

Breaking Down Where Interest Groups Stand

Health industry stakeholders' silence on repeal is a calculated gamble. Both parties are expected to propose changes to the overhaul in coming months, "so remaining neutral for now is a smart move, according to health care experts," *Politico* reports.

It's also a decision informed by the bottom line. After investing millions of dollars to lobby officials, the resulting law and early regulations generally benefit each industry segment. While Health Access' Wright noted that a handful of players have found ways to hike profits in the pre-reform environment, that kind of approach "is not sustainable in the long run" and most are adapting to new rules that will stress cost-control and higher quality.

Insurers

The trade group America's Health Insurance Plans vows that it isn't behind the new repeal effort -- and for good reason, say financial analysts who watch the health insurance industry.

"The worst is behind them," Ipsita Smolinski, president of Capitol Street, told *Politico*. Between the law's favorable regulations and its expected surge of newly insured patients, "investors know [health insurers] have a pretty viable future," Smolinski added.

Care Providers

Hospital associations ultimately threw their support behind the law, and that hasn't changed in the past year. Many larger hospitals are gearing up to form "accountable care organizations" in hopes of qualifying for the overhaul's new incentive payments. Meanwhile, the National Association for Public Hospitals says the law's investments in prevention and access will help its target population of low-income patients.

The impact on physicians is difficult to quantify, as some specialties stand to gain and others lose. A new Thomson Reuters survey found that most physicians believe health reform will hurt their individual reimbursement.

Employers

The National Federation of Independent Business has come out strongly against the law's employer mandate and has joined the multi-state lawsuit against reform. However, NFIB has

backed away from its January 2009 study -- based on a hypothesis that was crafted well before the reform law -- that predicted an employer mandate would eliminate 1.6 million jobs between 2009 and 2014. However, the group still concludes that small businesses would be hurt by the law's requirements.

That claim "has no justification," according to Micah Weinberg of the New America Foundation's Health Policy Program. Instead, there's more evidence that the law "will create jobs than that it will eliminate them," Weinberg added.

The Center for American Progress' David Cutler also thinks repeal would be bad for business. Arguing that the law will cut overall health spending, Cutler predicted that up to 400,000 jobs per year could be lost if employers are forced to absorb the system's higher health costs.

Patients

Many of the law's early benefits have been framed as patient protections, and an HHS study released on Tuesday goes a step further. According to the report, as many as 129 million U.S. residents under age 65 have pre-existing medical conditions that could cause them to be rejected or charged higher rates by health insurers if the overhaul is rolled back.

AHIP and Republicans have said the study's findings are exaggerated and suggest the law instead diminishes health coverage, particularly for seniors. For example, the overhaul is expected to weaken the popular Medicare Advantage program, which offers expanded benefits like free eyeglasses and gym memberships. John Goodman of the National Center for Policy Analysis said the law's "draconian" cuts to Medicare will force some seniors to lose one-third of their benefits by 2017.

Coming Up Next: Trying to Keep Benefit While Dropping Oversight

No one expects House Republicans' repeal bill to actually advance through the Senate; it's what follows that bears watching.

House Republicans on Thursday will begin examining targeted revisions to the law, as the Judiciary Committee convenes to discuss malpractice reform. Attempts to take the overhaul apart in pieces, such as by repealing the 1099 tax reporting provision, also are ahead. Against this backdrop, industry stakeholders are expected to lobby for specific changes that will preserve the law's benefits to them while weakening oversight of regulations like the medical-loss ratio. It's also possible that the House repeal bill will "embolden governors who have staked out a position against the law to drag their feet," according to Drew Altman, CEO of the Kaiser Family Foundation

California Healthline will track the fight to repeal the reform law as it unfolds in coming months. Meanwhile, here's a roundup of other health reform stories making news across the nation.

Challenges to the Reform Law

- Last week, House Republicans renumbered a bill -- which would repeal the 1099 tax-reporting provision in the federal health reform law -- from HR 144 to HR 4, indicating that eliminating the controversial provision is a top priority for GOP lawmakers. The renumbered bill retains the original language of HR 144, but the change in its number ensures that Republicans will be able to address it on an expedited basis. The GOP holds the House majority, which allows them to control the first 10 bills in Congress (Kasperowicz, "Floor Action Blog," *The Hill*, 1/13).
- After voting on legislation (HR 2) to repeal the federal reform law, House Republicans are expected to shift their focus to more-targeted efforts to modify the overhaul, such as repealing the 1099 tax-reporting provision and changing medical malpractice laws. Republicans plan to launch the second prong of their strategy on Thursday with the introduction of a resolution that would direct key House committees to develop legislation designed to fulfill Republicans' midterm election campaign pledge to "repeal and replace" the reform law (Ethridge, *CQ Today*, 1/18).

Countering the Challenges

- While Republicans launch their efforts to dismantle the health reform law, Democrats say they plan to retool efforts to defend and explain the law and its benefits. **HHS Secretary Kathleen Sebelius** recently said that there is an "opportunity for education" during the GOP repeal debate (Haberhorn, *Politico*, 1/18). **Bob Crittenden**, executive director of the **Herndon Alliance**, said it is essential to "[p]ut the provisions of the health care bill into personal terms, through stories and real things; how it really affects people" (Rovner, "All Things Considered," NPR, 1/17).
- On Friday, the **Department of Justice** filed a brief requesting oral arguments in the **Sixth U.S. Circuit Court of Appeals**, in response to an appeal in a Michigan lawsuit challenging the constitutionality of the federal health reform law. In the brief, DOJ lawyers wrote that the individual mandate is part of the framework for the larger overhaul, which would not be effective without the requirement. They added, "The minimum coverage provision is not a stand-alone measure. It is part of a broad economic regulation of health care financing in the massive interstate health care market, and it is essential to the [reform law's] regulation of underwriting practices in the insurance industry" (Norman, *CQ HealthBeat*, 1/14).

Determining Essential Benefits

- Last week, the **Institute of Medicine** held a two-day public meeting to determine the "essential health benefits" that insurers will be required to cover by 2014 under the federal health reform law. During the first day of the public meeting, a Democratic Senate aide said benefits should be especially robust to cover a sufficient variety of services. However, Republicans argued that **HHS** should refrain from mandating a wide array of benefits to avoid a sharp increase in premiums (Adams, *CQ HealthBeat*, 1/13).
- Also during the **Institute of Medicine** meeting, representatives from the health insurance industry argued that federal advisers should not recommend specific items or services as essential benefits. **Carmella Bocchino** -- executive vice president of clinical affairs and strategic planning for **America's Health Insurance Plans** -- said, "Other programs, such

as the **Federal Employee Health Benefits Program** and the **Massachusetts Exchange**, generally use a consistent model in which the benefit package only specifies general categories of items or services and does not indicate number and frequency of services that should be covered" (Millman, "Healthwatch," *The Hill*, 1/13).

In the States

- New **Kansas Attorney General Derek Schmidt (R)** said his first official action this year will be to seek inclusion in the Florida-based multistate lawsuit challenging the federal health reform law. Schmidt has requested that new **Florida Attorney General Pam Bondi (R)** file a motion to allow Kansas to join the 20 states that originally brought the lawsuit. In recent days, attorneys general in Ohio, Wisconsin, Wyoming and Georgia also have sought to join the suit (KTKA, 1/12).
- Meanwhile, **Maine Attorney General William Schneider (R)** also said that he plans to include his state in the multistate lawsuit challenging the federal health reform law, either by signing or writing an amicus brief or seeking permission from the judge in the case. Schneider cited the individual mandate as the reason for wanting to join the suit (Mistler, *Lewiston Sun Journal*, 1/12).

In Public Opinion

- The percentage of U.S. residents who strongly oppose the federal health reform law has declined to 30%, the lowest rate since September 2009, according to a recent poll conducted by the **Associated Press** and **GfK**. The poll found that 40% of respondents support the reform law, up from 38% after the midterm elections in November. However, it also found that one in four respondents said they want to completely repeal the overhaul (Agiesta/Alonso-Zaldivar, *AP/San Francisco Chronicle*, 1/17).
- Meanwhile, a nearly identical percentage of respondents to a recent survey by the **Quinnipiac University Polling Institute** said they believe the federal health reform law was **President Obama's** best and worst accomplishment since taking office. The survey found that 26% of respondents considered the overhaul Obama's greatest achievement, while 27% said it was his worst. One percent of the latter group also said Obama "failed" or conceded on "important parts" of the health reform law (Epstein, *Politico*, 1/13).