

NationalJournal

Past Imperfect

By: Meghan McCarthy

August 23, 2012

The most gruesome, avert-your-eyes aspect of Mitt Romney's tortuous effort to distance himself from his signature achievement as [Massachusetts](#) governor may be over. As the GOP presidential nominee, he should be able to spend less time worrying about shoring up his right flank by condemning the Affordable Care Act—and, by implication, the similar state law passed on his watch—and more time training his fire on other targets.

Calling attention to what has been derisively termed “Obamacare” was never a winning play for Romney. His scathing criticism produced an almost unresolvable tension between his current persona and the governor he was, a feedback loop that implicated Romney as much as the president. (Indeed, in August, Romney’s campaign seemed to cautiously embrace the Massachusetts law, to the consternation of conservatives.)

To the extent that Romney continues to assail the federal law, he’ll focus, as he has for months, on the government’s new role as regulator of the health insurance industry. His chief defense of the Massachusetts statute has been that it was a state-specific solution to a problem, not something intended for a national scale, and it’s true that he has never favored increased federal control over the insurance industry at any time in his career. Romney has vowed to let states opt out of the law’s requirements as soon as he becomes president—and to push for legislation to repeal it outright.

But, of course, his Massachusetts plan and the federal one share many important similarities. They both aim to help individuals buy insurance through state-based “exchanges.” And they both require people to have health insurance or pay a fine. Romney’s law expanded Medicaid and offered subsidies to help low-income people buy insurance, just like its federal counterpart. Obama’s reelection campaign loves to suggest that Massachusetts furnished the entire model for the federal law.

More important, the Obama team contends that were Romney to become president and advocate repeal, he would not just be seeking to eliminate what he describes as an unpopular, bureaucratic program; he would effectively be denying insurance to 30 million people, rolling back guarantees that those with preexisting medical conditions can get affordable coverage, and taking money back from seniors struggling to pay for their prescription drugs through Medicare.

So far, Romney's health care agenda isn't an affirmative one. He seeks to destroy more than to create. In his broad-brush vision circa 2012, the proposals seem to be decidedly warmed-over GOP pitches to loosen controls on insurers and unfetter the free market. On that score, at least, the gulf between Romney and Obama is wide. The health care law that Obama signed puts the federal government squarely in control of the private health insurance industry, regulating everything from how much money insurers can spend on overhead to the menu of benefits they must include in certain plans.

That translates, philosophically, to a wider debate about access to coverage. Should it be the government's role to pool risk to bring down the cost of health insurance and ensure that benefits are available to those most in need? Or should the market be left to its own devices to produce cost-saving efficiencies and tailored insurance plans?

FREEING INSURERS

Romney's position on health care and the law he helped enact in 2006 has always been more nuanced than his detractors on both the right and the left would have you believe. John McDonough, a professor at Harvard University's School of Public Health, says that even though the resemblance between Title I of the federal law—which establishes insurance exchanges—and the Massachusetts law is “striking and unmistakable,” it’s not entirely fair to call the state law “Romneycare.”

As a Republican governor working with a Democratic Legislature, Romney didn’t get everything he wanted, notes McDonough, who helped write the federal legislation. Romney sought but failed to get looser restrictions on the policies that consumers would be required to buy under the law.

“He really preferred a much thinner form of coverage for people … that would have only required very thin catastrophic coverage as the form of the mandate,” McDonough said.

Romney now prefers an even more bare-bones option on the federal level. In a health policy plan he sketched on the second anniversary of the Affordable Care Act’s signing, he rolled out a laundry list of the long-standing GOP-favored fixes to the insurance market.

He wants to let states pick and choose among the rules that the federal law puts on insurance plans, such as limiting how much they can spend on overhead or requiring reviews of premiums that increase 10 percent or more. Romney proposes capping medical-malpractice awards and enabling individuals and small businesses to join together to buy insurance coverage. He also wants to allow insurers to sell policies across state lines, a change that advocates say will increase competition and lower prices.

Romney says he would outlaw discrimination against individuals with preexisting medical conditions, but only for those people who already have insurance coverage. He has given few

details of how this would work, but it sounds similar to at least one piece of the current law that prohibits insurance companies from terminating a person's coverage because of a prior illness. Under Romney's plan, however, those who become ill without insurance and seek to buy it on the individual market would likely be out of luck. That position is a full pivot away from the Massachusetts plan and the federal law, which requires insurance companies to cover people regardless of their health or whether they've been insured previously.

TAX BREAKS FOR ALL

But even as Romney shifted further and further to the right during the primaries, one issue on which he did not choose the most conservative approach was the tax treatment of health insurance.

In the 2008 presidential campaign, GOP nominee [John McCain](#) said he would dismantle the tax exclusion that employers and employees get when they pay health insurance premiums, replacing it with a credit. Romney is taking the safer approach, saying he would give anyone that tax exclusion, regardless of how they get their insurance. Under current law, you are only eligible for the tax exclusion if you are covered through your employer.

Even though Romney hasn't completely embraced McCain's proposal, the philosophy behind the two positions is similar. Romney reasons that broadening the tax break encourages people to buy health insurance on their own instead of accepting whatever their employer provides, thus improving competition. Or so the Republican thinking goes.

As of now, Romney hasn't spelled out whether he would give people a tax break on their health insurance if they take the standard deduction on their tax forms—as most tax filers do—rather than itemize their deductions. But a campaign spokesman said that it is Romney's goal to ensure that everyone gets the "same tax treatment for health insurance."

"Our insurance system is based on this old model from World War II, when employees stayed with an institution for decades at a time," said Tevi Troy, who was Health and Human Services deputy secretary in the George W. Bush administration and is now an adviser on Romney's campaign.

So why not jettison the employer exclusion altogether? "Trying to do a major overhaul of everything all at once is not productive and [is] problematic," Troy said. "A smaller step might be a wiser way of doing it."

Going smaller might also be a wise campaign move. When Obama attacked McCain's proposal to end the tax credit, the GOP nominee struggled to explain his policy. Eliminating the exclusion would almost certainly cause turmoil and could encourage many employers to drop coverage—a charge that Obama frequently aimed at McCain's plan and that Republicans now make against Obama's health care law.

“You have to remember that Barack Obama spent more money demagoguing the McCain health plan than has been spent on a single idea in the history of the Republican Party,” said John Goodman, the CEO of the conservative National Center for Policy Analysis. “He made Republicans very skittish about that plan.”

Whether Romney gets rid of the tax exclusion or offers it to more people, Democrats say that his proposals won’t fix a broken system in the manner the 2010 health care law can. “It’s all the same Republican ideas that have been around forever,” said Jonathan Gruber, an MIT professor who is credited with convincing both then-Gov. Romney and Obama that a mandate for insurance coverage was necessary. “It’s striking in comparison to President Obama, who effectively adopted Republican ideas, like exchanges, to build this pragmatic reform. Romney is retreading the old trails, parts of which don’t work.”

Gruber says he doesn’t oppose changing the tax incentives associated with health care coverage but adds that doing so “doesn’t solve the fundamental problems in our market.” And those problems are? “A 55-year-old with cancer can’t get insurance,” Gruber said. “The employer solves that now … but with just individual tax credits, sick people can’t buy insurance.”

The Romney answer to that problem might be high-risk pools, which typically have the government subsidizing people who are already sick and can’t get coverage. But these pools are expensive, Gruber says, often requiring premiums that low-income people can’t afford.

FINISHING THE JOB

If Obama secures a second term, the Affordable Care Act will likely remain the law of the land for decades. His administration will be fully occupied with implementing the most sweeping provisions of the act.

Thanks to the Supreme Court, Obama administration officials will also have their hands full trying to convince state governors to expand their Medicaid programs to low-income, childless adults in 2014. The Court made that optional for states, and even though Washington picks up the full cost for the first three years, nearly a dozen governors have said they will not expand Medicaid or are leaning against it. Expanding the program is a key way the health reform law aims to get 30 million people coverage.

A mammoth challenge will be making sure that the state and federal insurance exchanges are up and running smoothly in 2014, when an estimated 30 million people start signing up online. One monster task that states must accomplish: developing IT systems that can process information from the Internal Revenue Service to determine what credits and benefits people qualify for based on their income, and that can cross-check that information with Medicaid databases and private insurance companies to enroll applicants.

As much as the 2010 election was a referendum on the Affordable Care Act, the 2012 election could be as well. Are voters prepared to see a Republican president try to dismantle Obama's health care law? Would they be happy with the GOP alternative, which would likely be a return to the pre-2010 status quo, with perhaps even greater deregulation of the insurance industry? The challenge for both Obama and Romney lies in outlining the risks involved if the other wins in November. And with Americans already weary of a health care debate that has lasted for years, voters could stop caring which is right—or, even worse, just stop paying attention.