

How The Health Law Might Be Changed By The Next President

BY MARY AGNES CAREY

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On the presidential campaign trail, Republican Mitt Romney has repeatedly called for repeal of the 2010 health law and President Barack Obama has vowed to implement it. Yet both men could face obstacles: Romney may be stymied by the lack of a majority in Congress to do his will and Obama could be forced by fiscal concerns or public opinion to revamp parts of the law.

Here is a look at how Obama and Romney might change the health law in the years ahead based on interviews with health policy experts.

OBAMA'S CHALLENGES

President Barack Obama has urged voters to re-elect him so that he can put the law fully into effect. But some analysts predict the mounting pressures to reduce federal spending will complicate that plan. And others note that in a second term, Obama may be more open to working with Congress to tweak provisions of the law that have raised concerns. Leading up to this tight election, Obama and Democrats have been reluctant to make modifications to the law, known as the Affordable Care Act (ACA).

"Right now (Democrats) can't criticize the ACA. It's just not politically smart," said Dan Mendelson, chief executive of the consulting firm Avalere Health who oversaw health programs at the Clinton administration's Office of Management and Budget. But should Obama win a second term and Democrats retain control of the Senate, "I think that adjustments are on the table" as part of a larger deal to reduce the federal deficit, he said.

Scale Back Subsidies: As part of that effort to reduce federal spending, there could be pressure to scale back the health law's subsidies that help low-income residents afford coverage. People who earn up to 400 percent of poverty - currently about \$92,000 for a family of four - are eligible to get financial help in purchasing coverage. Another big-ticket item is the expansion of Medicaid coverage to anyone up to 133 percent of the poverty level, or about \$30,656 for a family of four.

The ACA is "so vast that by default it has to be impacted if there is a bipartisan, grand bargain debt deal," said Mike Tuffin, managing director of the consulting firm APCO Worldwide's Washington, D.C., office and formerly executive vice president of America's Health Insurance Plans, an insurance industry trade group. "You can imagine the subsidies being impacted, the Medicaid expansion being impacted."

Changing the law's implementation schedule is wishful thinking among Republicans, Mendelson said. Any delay in full implementation could risk political backlash from consumers, who have waited years for the major provisions of the ACA to kick in. Delays may also open the law to other changes that Obama and Democrats don't want.

"My feeling is that it would be a major political liability for the president to encourage delay," he said, "and that if this is going to be his legacy, I see no indication from the policy makers that they either want or expect there to be a delay."

The president "is willing to work with anyone with good ideas to improve the Affordable Care Act. What he is not willing to do is reopen old partisan battles over the central guarantees of Obamacare," said Adam Fetcher, a spokesman for the Obama campaign.

Change in Age Rating Bands: The ACA prohibits insurers from charging more than three times as much for a policy sold to an older person than to a younger person. (This does not affect people over 65 who are covered by Medicare.) This is a change from current law in most states where there are no limits on how much more insurers can charge older people. America's Health Insurance Plans is advocating that the law's rating bands be changed to 5:1 to prevent what the group describes as "rate shock" for younger people and families.

The issue that arises is that the law "makes coverage more affordable for the elderly but more expensive for the young people they want to buy coverage," said Paul Heldman, senior health policy analyst with Potomac Research Group, a Washington research firm.

Medical Device Tax Cut: Of the many taxes in the health law, one has come under especially withering criticism: a 2.3 percent tax on the sale of any taxable



Voters stand in line outside of the Richland County Election Commission as they wait to cast early ballots in Columbia, South Carolina, on Friday, November 2, 2012.

medical device. Medical device manufacturers have loudly opposed the tax and won some key congressional support.

"For some, it could truly be the difference between surviving and having to close their doors," Michael R. Minogue, CEO and chairman of the board of Abiomed, Inc., which makes cardiac medical devices, told Congress this summer. But other analysts contend that the industry will do better under the law because more people will have coverage for treatments that use medical devices.

Legislation to repeal the tax passed the House in June with 37 Democrats joining Republicans to support the measure, although it is unlikely to receive Senate consideration this year.

The problem with this - or any change - in the law's taxes is finding another area to make up the loss of revenue. "It's easy to hate a tax. It's harder to find a pay for," says Mendelson.

Nonetheless, Tuffin says that this and other taxes could raise concerns if the public sees them as making health insurance or medical care more expensive. "All of those hit simultaneously and overnight in 2014 and they are going to drive up the cost of coverage," he says. "Consumers are going to feel that, small businesses are going to feel that."

IPAB: One of the most contentious provisions of the health law is the creation of a 15-member panel charged with making recommendations to reduce Medicare spending if the amount the government spends grows

beyond a target rate. Congress must pass alternative cuts of the same size, or the recommendations from the panel, known as the Independent Payment Advisory Board (IPAB), become law. IPAB members are prohibited from making recommendations that would increase revenues or change benefits, eligibility or Medicare beneficiary cost-sharing.

The board is disliked by many lawmakers. Some Republicans charge it amounts to health care rationing while members from both parties hate the idea of surrendering the power of the



Dr. Jill Biden speaks to an overflow crowd at an event at Obama-Biden campaign headquarters in Huntersville, North Carolina on Friday, November 2, 2012.

purse.

"IPAB is not a political must-have for the president," Mendelson said. "It is the kind of thing that could be treated in the context of other legislative adjustments."

ROMNEY'S CHALLENGES

Gov. Mitt Romney has promised a full-scale repeal of the ACA. "He will repeal it in its entirety and replace it with reforms of his own," Romney spokeswoman Andrea Saul said in an e-mail.

But short of Republicans controlling both chambers of Con-

gress, he would have to rely on the federal regulatory process to choke off funding and give states wide latitude to implement - or ignore - the law. If Republicans took control of the Senate but had fewer than the 60 votes needed to pass most legislation, Romney could be forced to use a difficult legislative process known as "reconciliation" to try to dismantle the measure.

Still, some of the law's supporters believe such a Republican effort could be successful. "I would say the bulk of it can be dismantled," said former Senate Majority Leader Tom Daschle, D-S.D. "1/8Romney 3/8 can use reconciliation for certain amounts affecting the budget of the federal government. He could have a profound effect on the outcome of the ACA in a very short period of time."

Slowing Down Implementation: The health law gives tremendous power to the secretary of Health and Human Services to implement the health law, and a Romney administration could use that power to slow the rulemaking process to a crawl.

"1/8Romney 3/8 can really do a lot to change the course of the legislation because - especially with the Affordable Care Act - the secretary and the president were given wide latitude," Daschle said.

If Republicans win control of the Senate, they could also use the reconciliation process which requires only a majority instead of the 60 votes usually needed to pass a measure - to strip out sections of the law that relate to the federal budget. That would in-

clude some of the law's biggest provisions - such as the health insurance exchanges, subsidies to purchase coverage and the Medicaid expansion. Removing those sections would gut the law's goal of covering 30 million more Americans.

But reconciliation can be a cumbersome and difficult process. In addition, it only applies to budget measures so large chunks of the law would be unaffected. And changes made under the process can't increase the deficit.

"I think as people get into the details, it doesn't work quite the way they thought," Senate Budget Committee Chairman Kent Conrad said when Senate Democrats were debating using reconciliation to pass the health law. Reconciliation, he said, "is anything but a slam dunk."

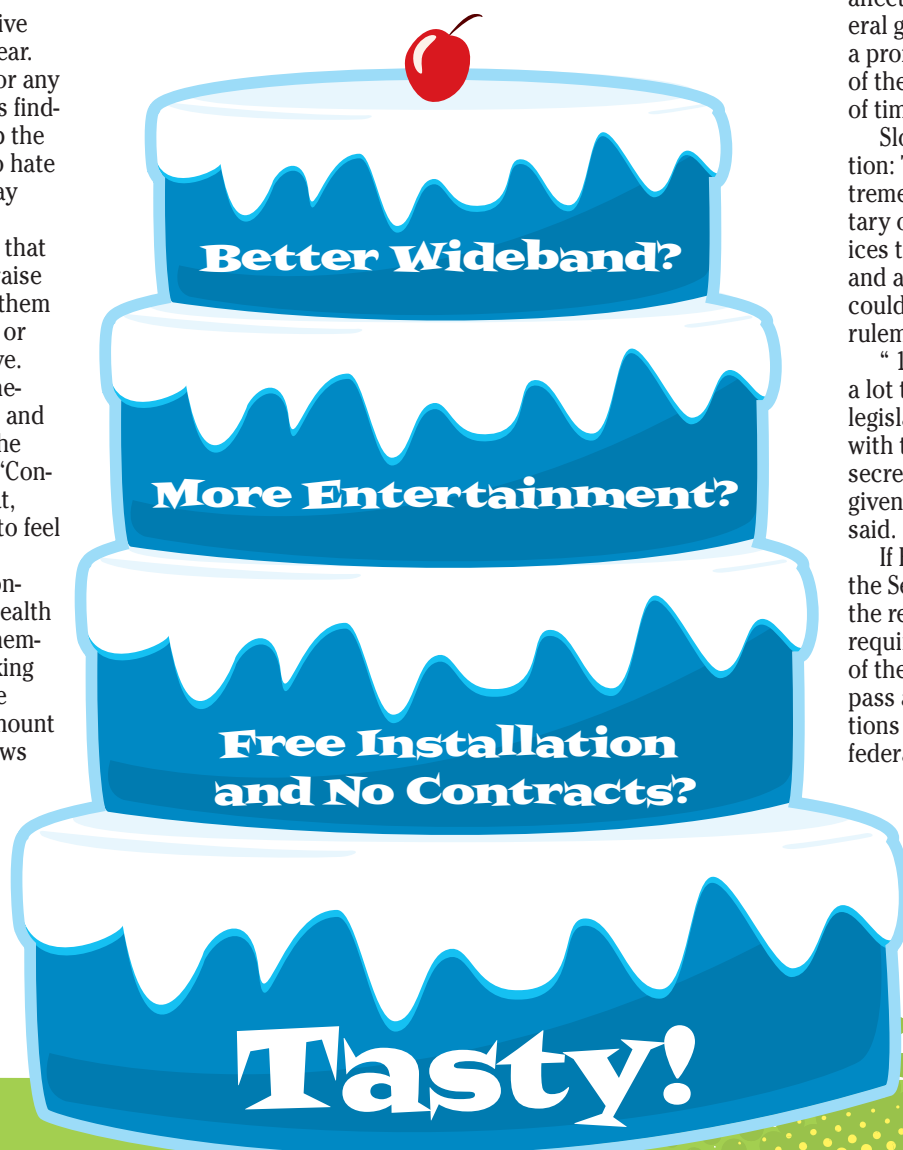
Waivers: Romney has said he would allow states to opt-out of the health law by using a waiver process. He could also use the process to give states wide latitude to implement provisions, like health insurance exchanges, that differ from requirements in the ACA. But there are many rules that govern the waiver process; ignoring those might not be so easy, analysts say.

An article in the journal of the American Medical Association this week examines the power an administration would have to block the law. It points out that under the Constitution, the president is required to "take care that the laws be faithfully executed" and can't "refuse to execute laws passed by Congress with which he disagrees," unless Congress grants that discretion.

Authors John Kraemer and Lawrence Gostin note that because the ACA "provides no such blanket waiver authority, granting states authority to disregard the ACA's key provisions would likely violate the 'take care' clause." The ACA, however, does allow states to seek waivers starting in 2017 if they can demonstrate an alternative approach that could increase coverage and reduce cost without raising the federal deficit.

If Romney opted not to move forward on the law, the administration could also be sued by individuals and groups. That litigation could take months - maybe years - to be resolved.

What Might Stay: Romney has said that he expects insurers to keep coverage that allows adult children to stay on a parent's health insurance policy until age 26, although it's unclear if he would support legislation or regulations to make that happen. He also has expressed support for states to set up health insurance exchanges and high-risk pools to cover the uninsured.



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