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Health care reform law faces scrutiny

One scenario is GOP, Dems working to improve measure

By [Guy Boulton](#) of the Journal Sentinel

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Salvaged by a legislative maneuver after more than a year of hearings, negotiations and compromises, the historic legislation to reform the health care system now faces new obstacles and an uncertain future.

The Republican-controlled House is almost certain to pass legislation next year to repeal the law - and that bill is just as certain to die in the Democrat-controlled Senate.

That will be little more than a political sideshow. What happens next is what matters.

"The big question is just how far Republicans can go to stop this law short of repealing it," said Michael Cannon, director of health policy studies at the Cato Institute.

Under one scenario, Republicans could use their control of the House - specifically, appropriations - to withhold money to implement the law whenever possible while working to keep the issue before voters until the 2012 presidential election.

Another scenario - clearly the rosier one - has Republicans working to make changes in the legislation, potentially working with Democrats in Congress to improve it.

Although Republicans have made clear that repealing the legislation is a goal, whether they will want to get into the messy task of crafting their own legislation to replace it is a question.

"How to do that without reopening the debate on health care reform is going to be hard," said Charles Franklin, a professor of political science at the University of Wisconsin.

For one thing, slowing the rise in health care spending and expanding insurance coverage don't lend themselves to simple or painless solutions.

"The GOP can't walk in and say, 'We've got the magic bullet,'" Franklin said.

Even supporters of the current law acknowledge some Republican proposals could improve the legislation. And Republicans may be pressured to provide an alternative to the current legislation.

"This is going to be a fascinating struggle for the GOP," Franklin said.

Hovering in the background of all this is the prospect that the Supreme Court could eventually determine that key provisions of the law are unconstitutional.

Chokehold on funding

Seven months after the law was enacted, a majority of Americans neither favored nor opposed health care reform legislation, according to an analysis of 17 independent polls by Robert Blendon and John Benson of Harvard University published in the New England Journal of Medicine.

Many and maybe most Americans also have scant understanding of what the legislation will do. And many of the provisions in the legislation - such as requiring health insurers to cover people with pre-existing conditions - may have broad support.

For certain, the Republicans in the House could make life much more difficult for the Obama administration.

"It's going to be trench warfare for at least the next two years," said Stuart Butler, vice president for domestic and economic policy at the Heritage Foundation.

He expects Republicans to take steps to stymie the legislation, such as withholding funds to implement the law.

"They have a chokehold on the funding of this legislation," Butler said.

The House also could attach changes in the legislation to other bills.

To Butler, the legislation is fundamentally flawed, giving the federal government too much control, and is too complex. But he also said Republicans will need to come up with an alternative.

Making fixes to the legislation or presenting an alternative plan, however, would require getting into the complexity of health care reform.

"It's important to keep in mind that there's a big difference between campaigning and legislating," said Austin Frakt, a health economist and assistant professor of health policy and management at Boston University's School of Public Health.

The House leadership also will be pressed by special interests groups that want specific provisions in the law eliminated, such as its taxes on health insurers and medical device companies. That, though, would only add to the legislation's cost.

At the same time, Republicans have promised to rein in federal spending, and Frakt said that will be impossible without looking at the cost of the Medicare program.

"They've talked themselves into a very difficult position on Medicare," Frakt said.

Risk of backlash

Joseph Antos, a scholar in health care and retirement policy for the American Enterprise Institute, said that little will happen on health care policy - or much else - short of working out a deal with the Obama administration.

"We could easily have two years of nothing happening," Antos said.

Even withholding funds could have limited effects on the implementation, he said. The Department of Health and Human Services, for example, could reprogram some money as well as reassign people to work on implementation.

Len Nichols, the director of the Center for Health Policy Research and Ethics at George Mason University, noted that a large amount of the money needed to implement the legislation already has been committed.

"When you get down to specifics, there's going to be a lot less defunded," Nichols said.

He expects the law to move forward.

"Most people want some kind of health care reform," Nichols said.

Working to hinder the implementation of the law - what Cannon of the Cato Institute likened to throwing sand in the gears - also is not without risks.

"If not done carefully," he said, "it could backfire on them."

Republicans also may be wary of antagonizing voters when they have hopes of winning the White House in 2012, and when the Supreme Court may rule that key provisions in the law are unconstitutional. Attacking specific provisions in the law without angering voters could be tricky.

For example, eliminating the provision that requires health insurers to spend 80 cents of premiums on medical care would be hard to defend, Franklin said. And repealing the provision that eliminates the so-called doughnut hole in the Medicare prescription drug benefit may be opposed by people who are 65 and older.

Even eliminating the requirement that everyone must have health insurance - one of the most controversial provisions in the law - would undercut the ability to require health insurers to cover people with pre-existing conditions.

"It totally guts the rationale of how you can do that," Franklin said.

Renewed scrutiny

But the law is likely to come under renewed scrutiny, as Republicans in the House could hold hearings on health care reform.

"That is not necessarily a bad thing, because it will remind people of the connection between the policy and the problems," said Thomas R. Oliver, a professor at the University of Wisconsin School of Medicine and Public Health.

Democrats had hoped that support for reform would increase as Americans learned more about the

legislation. Medicare, for example, was passed with only 46% of public support. But that hasn't happened.

Most of the benefits don't kick in until 2014. And the most tangible benefits are expanding coverage for lower-middle and middle-class individuals and families and people with pre-existing medical conditions who don't get health benefits from their employer. Those are not high priorities for most Americans, the vast majority of whom have health insurance.

Franklin said Democrats have systematically misread the American public when it comes to health care reform.

The strong opposition to the legislation when it passed should have given Democrats a plain warning that they would need good talking points, Franklin said.

"There was a mysterious failure by advocates of this bill to explain their message," Franklin said.

Even well-informed people don't fully understand the legislation. But they do know it will cost an estimated \$1 trillion through 2019. That works out to less than 3% of the roughly \$40 trillion the country is expected to spend on health care in that time.

But, Franklin said, "Democrats never seemed to appreciate how devastating that number was."

Support could still increase as people learn more about the law - and that could be a byproduct of the expected moves by the House to repeal the law.

But Butler of the Heritage Foundation said Democrats were mistaken to believe health care reform could be passed without bipartisan support. He expects opponents to keep the issue alive until the presidential election.

"Then in 2012 comes the real referendum," he said.

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