

Healthcare Reform and Republican Sweep: What Can They Do?

With Governor Romney all but assured to be the Republican nominee, and though his electoral hopes remain slightly below 50% (as is Republican control over the Senate), speculation turns to his oft-repeated desire to dismantle the 2010 health reform law. While it is extremely unlikely that meaningful changes could be made via executive order or targeted waivers, as he has discussed, there remain a number of policy tools available to a GOP president and Congress that can be used to change or rescind various aspects of the law, or at least stall their implementation. These legislative and regulatory tools, however, do *not* kill Obamacare in a neat and tidy package, since many can't be utilized quickly or simultaneously.

This process is likely to be cumbersome, further prolonging uncertainty for the healthcare sector. Assuming Republicans move forward successfully with the policy options outlined below, the result will be positive for **medical device makers, drug makers. Insurers**, however, are likely to face pain until the industry reforms and individual mandate are altered or eliminated, which would prove positive. **Providers** in general, however, remain at risk of the Medicare reimbursement cuts being maintained or later resurrected as a way to slow entitlement spending.

Republicans' best hope for partial repeal is through the reconciliation process, whereby legislation only needs a simple majority to pass the Senate, as it is certain that the GOP will not have a filibuster-proof majority next year. However, the reconciliation process cannot undo reform in its entirety, as some key elements of the law are not considered to have a budgetary impact and would therefore require 60 votes to overcome a filibuster. As such, a Romney Administration could address these issues through the decision not to implement or release final rules, as well as the rescission or rewriting of regulations. Furthermore, a new GOP Congress can block implementation of any new rules the Obama Administration releases in Q4/early Q1 via the Congressional Review Act with a simple majority vote.

Below are the various issues being targeted by Republicans, as well as the policy tools they will employ to repeal, replace or stall them. We note that the following assumes a Romney victory, a Republican Congress, and that the Supreme Court *upholds* the law in its entirety.

Policy	Tool	Odds
Medicaid expansion	Reconciliation	<i>Likely</i>
Tax subsidies insurance purchase	Reconciliation	<i>Likely</i>
Industry excise fees (Insurer, Drug and Device)	Reconciliation	<i>Likely</i>
Penalty associated with the individual mandate	Reconciliation	<i>Likely</i>

Individual mandate	Would require 60 votes and bipartisan alternative to repeal. Alternative (medical malpractice reform, refundable tax credits, expanded use of health savings accounts and high risk pools, etc.) would likely be in conjunction with altered insurance reforms.	<i>Uncertain, depends on details of alternative</i>
Employer mandate	Reconciliation	<i>Likely</i>
Insurance market reforms already in place (expanded dependent coverage, rescission ban, prohibition on lifetime limits, no cost-sharing on certain preventive services)	Rescinding or rewriting regulation. Popular policies (e.g. dependents, rescission ban) likely to remain in some fashion.	<i>Likely</i>
Insurance market reforms to take effect 2014 (guaranteed issue, community rating, limitations on annual limits)	Need 60 Senate votes to overcome a filibuster, likely in conjunction with mandate and coverage alternative, <i>or</i> Romney Administration does not issue regulations, though would further prolong uncertainty for insurers.	<i>Uncertain, depends on details of alternative</i>
State and federal exchanges	Need 60 Senate votes to overcome a filibuster, <i>or</i> Rescinding or rewriting regulation, <i>or</i> Romney Administration does not approve state exchanges or establish a federal exchange.	<i>Likely</i>
Independent Payment Advisory Board (IPAB)	Reconciliation	<i>Likely</i>
Essential benefits	Need 60 Senate votes to overcome a filibuster, <i>or</i> Rescinding or rewriting regulation. Since Obama merely issued guidance, it is arguable that Romney Administration simply does not release rules. Not only does this create confusion for the insurers, it could prompt litigation.	<i>Likely</i>
Closure of the Medicare Part D “donut hole”	Reconciliation	<i>Unlikely due to policy’s popularity</i>
Medical-loss ratio (MLR)	Need 60 Senate votes to overcome a filibuster of either outright repeal or counting broker fees in the formula, <i>or</i>	<i>Less likely, not a big priority</i>

	Rescinding or rewriting regulation.	
Rate review	Need 60 Senate votes to overcome a filibuster, <i>or</i> Rescinding or rewriting regulation, <i>or</i> Romney Administration does not conduct rate review.	<i>Less likely, not a big priority</i>
Increased Medicaid best price discount on outpatient drugs	Reconciliation	<i>Likely</i>

Additional information is available upon request.

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