

Insight



What to Expect With a Republican Majority: Health Care in the 114th Congress

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With Senate Republicans set to assume their first majority in eight years, the priorities of both chambers of Congress will become more closely aligned. Now, for the first time since the Affordable Care Act (ACA) was signed into law, Republicans will have an opportunity to weigh in on the president's signature domestic policy achievement legislatively. Every new Congress brings with it high hopes for big accomplishments, but those expecting large scale legislative victories would be wise to lower their sights. In the Senate, Republicans lack a filibuster proof majority and President Obama remains in the Oval Office. Repealing and replacing the ACA, or enacting significant entitlement reforms most likely remain beyond Congress' reach next year. Instead, Congress can and should focus on achievable health policy goals in 2015.

THE AFFORDABLE CARE ACT

Achievable Reforms

Encouraging Innovation

As a source of revenue, the ACA includes a 2.3 percent sales tax on all medical devices. The tax is problematic, not only because it is further taxing innovative health care companies that have high initial capital investments, but also because the tax is levied on each individual sale and not a company's net profit. This means companies that are years away from achieving profitability must still pay the tax on sales of their device, even as they remain in the red. As of August 2014, the tax has already cost the medical device industry over \$900 million,^[1] and is impeding a crucial industry from developing and selling products in the US. There exists broad bipartisan support in Congress for removing this onerous tax, and even President Obama has signaled his willingness to eliminate it. Congress should move quickly to repeal the medical device tax and chalk up an early bipartisan accomplishment.

Removing Burdens for Employers

The ACA has savaged the labor market, reducing small business pay by at least \$22.6 billion annually, and costing American workers more than 350,000 jobs nationwide according to recent [American Action Forum research](#). The [employer mandate](#) in particular has resulted in serious burdens for employers of every size. Requiring many employers to provide coverage or face a fine has stalled an already damaged economy. The ACA not only punishes employers for not providing coverage, but also for providing health insurance coverage that is not deemed sufficient. Congressional action to roll back the harm done to the labor market through a burdensome mandate would lift some of the pressures on the economy, and is a needed change to the ACA. Adjusting the ACA's definition of full-time employment, changing time consuming reporting requirements, or

delaying or repealing the employer mandate would be good places to start to undo some of the damage inflicted by the law.

Protecting Medicare Beneficiaries

Even though Medicare is one of the primary factors driving health care spending, the program was largely ignored by the authors of the ACA beyond [cuts used to pay for subsidies](#) for those under 65. The legislation did, however, establish a fall back plan if Medicare spending exceeds target rates. That fall back is the potential rationing of benefits for Medicare beneficiaries in the future through the [Independent Payment Advisory Board \(IPAB\)](#). IPAB is designed to make decisions on cuts to Medicare reimbursements, but will effectively decide which benefits Medicare will continue to pay for. Repealing IPAB would ensure that the still inactive board does not determine the future of seniors' health care benefits.

Restoring Individual Liberty

The ACA broke disturbing new ground by penalizing economic inactivity on the part of individual consumers through the law's much derided individual mandate. The reality, however, is that the Obama Administration has removed the teeth from this mandate by providing at least fourteen exemptions that cover virtually every American. Nevertheless, the individual mandate and its violation of personal liberty remain and could be revived. Congress should act to finish the job the administration started by repealing this deeply unpopular provision altogether.

Preventing Unnecessary Premium Increases

The authors of the ACA argued that insurers would be generating more revenue under the law due to the increase in customers. Because insurers would see an increase in cash flow, it was argued they should contribute more to the law's financing. As a result the Health Insurance Annual Fee—better known as the Health Insurance Tax (HIT)—was born. While the HIT is assessed to insurers based on [their share of total premiums](#), the total dollar amount to be collected is set in statute and not based on actual profits. The tax will collect \$8 billion in 2014, \$11.3 billion in 2015, and more in out years. This additional tax will [be passed along](#)—at least in part—by the insurers to consumers. In other words, the HIT is really just an additional [premium increase](#) of \$60-\$160 per person in 2014. Repealing this tax on health insurance would prevent premium increases for millions of consumers.

Getting Creative with the Exchanges

The ACA's health insurance marketplaces—or exchanges—are one of the most visible and problematic pieces of health reform. Congress should consider changes to these new pieces of health system infrastructure from a variety of angles. The first priority should be to rein in spending by focusing on subsidies.

Targeting Subsidy Eligibility

The current subsidy eligibility allows for a family of four earning \$95,400, a level well above the national median family income of \$65,587,^[2] to receive assistance with their health insurance premium. By decreasing the subsidy eligibility level and targeting those who really need assistance, subsidy spending can be reduced and perhaps repurposed for other reforms. For example, Congress could shift the subsidy income eligibility level

from 400 percent of the federal poverty level (FPL) to 300 percent FPL—a scenario that would [save subsidy dollars](#) while only impacting a relatively small number of the highest income households receiving premium assistance.

Increasing Competition

The limitations placed on insurance companies in designing health plans to be sold in the exchange should be reworked by Congress to allow for more competition between plans and more choices for consumers. For example, catastrophic plans are currently restricted to individuals under age 30 and should be opened to anyone interested in this option. Further, if the age bands—which are currently set at a 3:1 ratio where the unhealthiest enrollees can only be charged three times what the healthiest participant in the exchange is charged—were moved to a 5:1 ratio, plans would be more attractive to younger individuals, have more flexibility in design, and could offer a greater variety of prices.

Along with the age restrictions, Congress could provide flexibility regarding the percentage of health care costs covered by a given plan. The metal levels in the exchanges (bronze, gold, silver, and platinum) indicate the actuarial value of a plan—or the percentage of covered services, where bronze covers 60 percent of health care costs, silver covers 70 percent, gold covers 80 percent, and platinum covers 90 percent.^[3] However, there is nothing magical about those particular percentages; they exist primarily to allow for easy comparisons between plans. Congress could allow for a range in actuarial value where issuers could design plans of varied actuarial value within a metal tier. In other words, bronze plan offerings might range in actuarial value between 55 percent and 65 percent, silver between 65 percent and 75 percent and so on, creating more choices for consumers and generating competition.

Ensuring Integrity in Subsidy Allocation

There is substantial reason to be concerned about the ability of exchange systems to correctly verify subsidy eligibility. Not only does this create [large risks for the federal budget](#), it also impacts consumers directly as the ACA allows for wrongfully issued subsidy dollars to be clawed back from consumers' income tax returns. Much needed changes to the process through which individuals are approved for premium assistance have been a focus in the House where bills addressing this problem have already been introduced. The Senate should follow the House's lead on this important issue in the next Congress.

BEYOND THE AFFORDABLE CARE ACT

Protecting Seniors' Health Care

Breaking the Doc Fix Once and For All

Congress has delayed statutorily mandated sustainable growth rate (SGR) cuts to Medicare physician reimbursement for the last decade; providing [numerous offsets](#) to ensure that physicians are not discouraged from accepting Medicare patients. Last year, significant progress was made toward a bipartisan agreement on the policies that should replace the SGR. Congress should build on this agreement and address the SGR once and for all. Getting the SGR out of the way serves a double purpose as it is one substantial step Congress can take to pave the way for eventual entitlement reform.

Preserving Medicare Advantage and Part D

Buttressing successful entitlement programs should also be a priority for the next Congress. Medicare Advantage and the Medicare prescription drug benefit (Part D) provide models for future entitlement reform, and are examples of conservative, free market principles working in the health care sector. These programs must be protected from continued regulatory attack by a hostile administration. Last year, Medicare Part D came under fire through [sweeping proposed regulatory changes](#), and the annual Medicare Advantage Call Letter provides an opportunity for yearly policy changes to MA. Congress should keep watch to ensure that seniors have continued access to needed benefits while providing a bridge to a post-Fee-for-Service future.

CONCLUSION

These suggestions are far from a comprehensive list of what Congress could accomplish in the 114th Congress, but they provide a glimpse of what is possible. Congress will not be able to completely repeal the ACA or dramatically restructure entitlements over the next two years. Frankly, passing an on-time budget and enacting spending measures through regular order will prove ambitious enough. But the next Congress will be able to make significant progress toward those larger health policy goals, as long as the legislature does not get bogged down in the pursuit of the unachievable. Congress has an opportunity to move forward on important health policies, and must seize it.

[1]<http://www.treasury.gov/tigta/auditreports/2014reports/201443043fr.pdf>