

THE OFFICE

Updating Your Estate Plan

Year's end is a good time to think about the various financial arrangements you've set up over the years, and consider whether they need updating. Your estate plan, in particular, needs regular review. Even if nothing important has changed in your life or the lives of those close to you since you last revised your will, chances are the laws have changed, or other factors may have rendered your plan obsolete without your even realizing it.

I am assuming, of course, that you have in fact drafted a will. If not, do it now. Things happen; if you die without one ("intestate," in lawyers' lingo), your heirs will be at the mercy of attorneys, bureaucrats, state and federal laws, and greed. Quarrels will ensue; decisions will be made that are almost certainly at variance with what you would have wanted; and a substantial chunk of your estate, which could have gone to loved ones or charity, will be lost to taxes and fees.

That said, let's consider some factors that may require modification of the estate plan you now (hopefully) have in place:

► **Laws change continually.** Trust laws, in particular, have changed a great deal in recent years, and new trust strategies have been devised as a result. New instruments like perpetual trusts, trust protectors, directed trusts, and total return trusts may or may not work to your advantage, but you won't know without asking. State laws af-

fecting estate planning also change on a regular basis.

Once a year, my wife and I meet with a lawyer who has estate planning expertise to learn about any new legislation that may affect our plan. Last year, I learned that my irrevocable trust is no longer totally irrevocable; new laws now permit certain provisions to be modified.



BY JOSEPH S. EASTERN, M.D.

Laws that don't directly regulate wills and trusts can have a significant impact on them as well. For instance, the ever-popular Health Insurance Portability and Accountability Act (HIPAA) affects your estate as well as your practice; under its provisions, your family cannot access your medical information or make treatment and life-support decisions without your specific permission. So if a Health Care Power of Attorney is not already part of your will, add it now. And be sure to modify it if your medical status (or your philosophy of life) changes, or if treatment for your medical condition evolves significantly.

► **Financial markets change.** It's not exactly a secret that asset values and interest rates have changed in big ways over the last few years. Those changes may have had a significant, unanticipated impact; large real estate or securities bequests could now be significantly smaller, and vice versa. Your accountant and estate lawyer should take a look at your assets periodically, and their appor-

tionment in your will, to be sure all arrangements remain as you intend. And be sure to notify them whenever the composition of your assets changes, even if the value doesn't. For example, selling a business or property and reinvesting the proceeds in something completely different could change how you leave that asset to your heirs because a different set of tax laws may apply.

► **Fiduciaries change.** The executor of your estate and the trustee(s) of your trust(s) may need replacing as circumstances change. If your brother-in-law is your executor and your sister divorces him, you may want to find a new executor. Or your once-vigorous trustee could now be aging or in failing health. Trustees are often financial institutions; if one of your corporate trustees goes belly up, or the employee you were working with retires or changes firms, you'll need a replacement. Keep track of your fiduciaries, and be prepared to make changes as necessary.

► **Personal circumstances change.** Some changes – marriage, divorce, the death of an heir or the birth of a new one – obviously require modifications to wills and trusts. But any significant alteration of your personal or financial circumstances probably merits at least a phone call to your financial planners; the need for changes, and your options should changes be necessary, are not always obvious. ■

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GOP Takeover of House Will Roil Reform Progress

BY ALICIA AULT

FROM A PRESS BRIEFING SPONSORED BY AMPLIFY PUBLIC AFFAIRS

WASHINGTON – The historic midterm election victory by Republicans does not signal the end of the Affordable Care Act, but now the law will very likely undergo the scrutiny that many in the GOP say it did not get as it made its way through Congress.

The GOP now holds a majority in the new House, with 239 seats, compared with 187 for the Democrats. Republican members of the Senate are still in the minority, but the current 52-46 Democratic margin is much slimmer than before the election.

Before the midterm elections, House Republican leaders and Senate Minority Leader Mitch McConnell (R-Ky.) vowed to "repeal and replace" the ACA if they regained the majority. A Republican-led House cannot make that happen alone; the Democratic-led Senate is unlikely to pass repeal legislation, and President Obama would likely veto any bill sent to him.

After the midterm elections, President Obama said he welcomed GOP input. "If the Republicans have ideas for how to improve our health care system, if they want to suggest modifications that would deliver faster and more effective reform to a health care system that has been widely expensive for too many families, businesses, and certainly our federal government, I'm happy to consider some of those ideas," he said.

But he said that the White House would not entertain a repeal debate.

Speaking at a postelection forum, Jim Slattery, a former six-term Democratic congressman from Kansas, said that he expected to see a repeal proposal. "The new Tea Party congresspeople and the leadership in the House will probably have to introduce some kind of resolution that would call for the repeal of ACA, and I think they know it's going nowhere and it's not going to happen," said Mr. Slattery, now a lobbyist with Wiley Rein.

Mr. Slattery said that President Obama mainly has himself to blame for the Democrats' poor showing in the election and for polling data indicating that half of Americans want to repeal the ACA. The president "failed to connect the dots" with Americans on how the law would benefit them, he added.

At the same forum, Nancy Johnson, a former Republican House member from Connecticut, said that she expected to see a number of oversight and investigative hearings on the ACA.

"The one thing that has to be done [in the next Congress] is, people have to regain their confidence in government and that's not about policy, that's about process," said Ms. Johnson, a senior public policy adviser at Baker Donelson. "Half the bill is terrific. But the other half wasn't seen, and that created suspicion."

Congressional Republicans have said they will keep some of the insurance market reforms – such as the prohibition on denying coverage for preexisting con-

ditions – but will seek to throw out the mandate that individuals have health insurance coverage. That is a formula for disaster for the law – and for insurance companies, wrote Henry Aaron, a senior fellow at the Brookings Institution, in a perspective article published in the *New England Journal of Medicine* (2010;18:1685-7). Unless most Americans are covered, insurers might be bankrupted by the reforms, he said.

"In brief, the pledge to keep insurance-market reforms without both mandated coverage and subsidies is untenable," Mr. Aaron wrote.

Mr. Slattery agreed. "If you're going to really reform the insurance industry with the preexisting-condition reforms, we have to have a mandate of some kind," he said.

The requirement that individuals carry insurance or pay a penalty, however, is the central issue being challenged by 20 states. And governors and attorneys general elected in five states campaigned on the promise that they would support overturning the mandate.

With money tight and millions of potential new Medicaid enrollees, governors from all parties may revolt against the mandate, said Ms. Johnson. States are challenging the mandate in part because it imposes burdens they can't fulfill, she noted.

Back on Capitol Hill, the GOP-led House will also likely take a close look at the ACA-created Independent Payment Advisory Board, said Ms. Johnson. The IPAB, charged with looking at how

the federal government pays physicians, hospitals, pharmaceutical companies, and other health providers, would have broad powers that make many Republicans uncomfortable, she said. ■

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