

GOP Takeover of House Will Roil Reform Progress

BY ALICIA AULT

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WASHINGTON — The historic midterm election victory by Republicans does not signal the end of the Affordable Care Act. But now the law will probably 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 House. Republican members of the Senate are still in the minority, but the current Democratic margin is much slimmer than before the election.

Earlier this year, House Republican leaders and Senate Minority Leader Mitch McConnell (R-Ky.) vowed to “repeal and replace” the Affordable Care Act if they regained the majority. A Republican-led House will not be able to make that happen alone, and the Democratic-led Senate is unlikely to pass repeal legislation.

Meanwhile, President Obama would likely veto any bill sent to him.

But Rep. John Boehner (R-Ohio), elected by Republicans as House speaker when the 112th Congress convenes in January, has indicated that the health reform law will be challenged in his chamber.

At a postelection press briefing, 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 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 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, but they’re going to have to do that probably to satisfy political demand,” said Mr. Slattery, now a lobbyist with Wiley Rein.

Mr. Slattery said 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 Affordable Care Act.

At the same forum, Nancy Johnson, a former Republican House member from Connecticut, said she expected to see many oversight and investigative hearings on the Affordable Care Act.

“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.”

Rep. Boehner and other congressional Republicans have said they will keep some of the insurance market reforms — such as the prohibition on denying coverage for preexisting conditions — 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 involved in a lawsuit against the federal government in the U.S. District Court in Florida. Virginia also has filed its own suit, a case that Mr. Slattery said he expected to rise to the Supreme Court.

And governors and attorneys general elected in five states also campaigned on the promise that they, too, would support overturning the mandate.

With money tight and millions of potential new Medicaid enrollees, governors from all parties might revolt against the mandate, Ms. Johnson said. “If you look at the basis on which states are challenging the mandate, it’s in part that it abrogates the federal-state partnership, because it imposes burdens they can’t fulfill.”

Back on Capitol Hill, the GOP-led House also will likely take a close look at the Affordable Care Act-created Independent Payment Advisory Board, Ms. Johnson said.

The IPAB, which is 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.

In his perspective piece, Mr. Aaron wrote that that Republicans also could tinker with the Affordable Care Act by cutting off funding for implementation via the appropriations process, or even trying to prohibit the Health and Human Services department from writing regulations.

Some of those regulations are due to come out in the next few weeks — before the start of the 112th Congress. ■



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APA Backs Same-Sex Marriage

The American Psychiatric Association has filed a brief in support of same-sex marriage in the California case focusing on the state’s Proposition 8. The case is an appeal of the August ruling that the proposition’s ban on such marriages is unconstitutional. Scientific evidence shows that homosexuality is a normal expression of sexuality and that sexual orientation is not the result of choice, the APA noted, adding that there is no evidence that lesbians and gay men have less stable relationships or that they are less capable parents than heterosexuals. The ban denies homosexuals “the social, psychological and health benefits that are associated with marriage,” Dr. James H. Scully Jr., the association’s CEO, said in a statement. In filing the brief, the psychiatrists joined the American Psychological Association, the California Psychological Association, and the American Association for Marriage and Family Therapy.

Institute Urges Oil Spill Study

The Institute of Medicine has urged the Department of Health and Human Services to make the study of the behavioral health effects of the BP oil spill in the Gulf of Mexico a top priority. Researchers should identify factors associated with individuals’ vulnerability or resilience during oil spills and other natural disasters, said the institute. It also urged study of the health effects of exposure to oil, dispersants, and other chemicals associated with clean-up, and a thorough assessment of seafood safety.

Ex Pharma Lawyer Is Charged

The U.S. Department of Justice issued a six-count indictment in early November against Lauren Stevens of Durham, N.C., a former pharmaceutical company executive, charging her with obstruction and making false statements. The charge included no company, and the department declined to disclose Ms. Stevens’ employer, but GlaxoSmithKline confirmed that she was employed there until her retirement. An industry directory identifies Ms. Stevens as a GlaxoSmithKline vice president and attorney. Ms. Stevens allegedly helped the company promote a drug (reportedly the antidepressant Wellbutrin SR) for unapproved, off-label uses. She also failed to provide the Food and Drug Administration with slide sets that had been used by physicians “who were paid by the company to promote the drug,” according to a Justice Department press release.

Company Pays Huge Fine

GlaxoSmithKline pled guilty to charges that it manufactured and distributed drugs contaminated with microorganisms. The company will pay

\$750 million to settle federal and state government claims. The Department of Justice announced the agreement in late October. The drugs, manufactured in Puerto Rico between 2001 and 2005, included the anti-nausea drug Kytril, the antidepressant Paxil CR, the diabetes medication Avandia, and the anti-infection ointment Bactroban. GlaxoSmithKline will pay the federal government \$600 million, and a whistleblower will receive \$96 million for having tipped the government to the manufacturing issues. The states are eligible to receive up to \$163 million from Glaxo. The complaint alleged that the company knowingly caused false claims to be submitted to state Medicaid programs. “FDA and its law enforcement partners will continue to aggressively pursue those companies that place the public health at risk by distributing products that do not comply with all FDA requirements,” Mark Dragonetti, special agent in charge, FDA New York Field Office, said in a statement.

Top Fraud Cases Involve Health

Pharmaceutical companies paid large fines in 8 of the top 10 fraud cases settled by the Department of Justice in 2010, according to the Taxpayers Against Fraud Education Fund. An insurer and a hospital rounded out the top 10 largest fine payers, making all 10 of the top settlements health care related. Allergan Inc., which in September settled allegations that it had marketed Botox (onabotulinumtoxinA) for off-label uses, accounted for the largest settlement (\$600 million). AstraZeneca International came in second with its \$520 million payment for illegally marketing the antipsychotic Seroquel (quetiapine). About 80% of all fraud recoveries under the False Claims Act occur in the health care area, the group said.

Drug-Related Hospitalizations Up

Hospitalizations for drug-induced conditions more than doubled between 1997 and 2008 for Americans aged 45 years and older, according to the Agency for Healthcare Research and Quality. Meanwhile, admissions related to prescription- and illicit-drug problems grew by 96% for people aged 65-84 years and by 87% for those older than 85, the agency said. By comparison, the number of drug-related hospital admissions declined by 11% among adults aged 18-44 years. In the older groups, hospitalizations increased most for drug-induced delirium; poisoning or overdose by codeine, meperidine, and other opiate-based pain medicines; and withdrawal from drug addictions, the AHRQ said. Medicare and Medicaid paid 54% of the \$1.1 billion tab for these hospitalizations.

—Alicia Ault