



# MEDICARE REPORT



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## **Republican House Majority Sets Sights On Repealing New Health Reform Law**

**T**he new health care reform law will come under fire from congressional Republicans throughout 2011, starting with a House bill introduced early in the new year to repeal it, but any changes ultimately made to the measure are likely to be minor given Democrats' control of the Senate and White House, lawmakers, congressional aides, lobbyists, and health care analysts told BNA.

Legislation to repeal the new health care law, called the Repealing the Job-Killing Health Care Law Act, will be voted on Jan. 12, House Majority Leader Eric Cantor (R-Va.) announced. Debate was scheduled for Jan. 7.

Cantor said the reform law "has been rejected by the majority of Americans" and repeal legislation "reflects our willingness to listen to the American people."

The measure is likely to pass the House but not the Senate, forcing Republicans in both chambers to adopt alternative strategies to derail implementation of the law, including starving it of funds via the appropriations process and/or attempting to remove certain provisions.

One provision Republicans and some Democrats may try to remove is creation of the Independent Payment Advisory Board, which is scheduled to be implemented in 2014 and make recommendations to trim Medicare spending.

The panel is not popular with providers or some senior advocacy groups, who fear it may cut provider Medicare reimbursement too deeply, and some Democrats also would like to see IPAB stripped from the law because it removes decision making from the Congress.

**PPACA Repeal Efforts.** While the GOP's legislative strategy for dealing with the health care reform law in 2011 was in flux in late December 2010, those interviewed by BNA said additional measures likely to come under scrutiny include the Community Assistance Services and Supports Program, the mandate requiring individuals to purchase insurance or pay a penalty, and a

provision requiring businesses to file Form 1099 with the Internal Revenue Service whenever they spend more than \$600 a year with a single vendor. Removing the latter provision from the law is supported by Democrats, as well.

Congressional Democrats and the White House are planning to deflect Republican moves to dismantle the law by stressing what they claim are its beneficial aspects, including providing coverage for millions of Americans, the elimination of insurers' ability to deny coverage based on pre-existing medical conditions, and other reforms of the private insurance market and new preventive care provisions, and a 12-year extension of the financial solvency of Medicare's Part A program.

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**Republican-backed legislation to repeal the health care reform law is likely to pass the House but not the Senate, forcing supporters of the repeal effort in both chambers to adopt alternative strategies to derail implementation of the law.**

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White House spokesman Robert Gibbs told reporters Dec. 21, 2010, "you can assume that we continue to believe that the passage of the [health reform] bill was a very important thing for the American people."

Gibbs said congressional GOP leaders "are going to have to answer questions from the American people about the benefits—like ensuring . . . that families aren't precluded from purchasing health insurance because of a pre-existing condition. I think there's genuine benefits that the law provided to Americans, that they're going to have to talk about what happens when you put insurance companies rather than families in charge of medical decisions."

“We’re certainly going to point out the lack of accuracy in their arguments and see what they have to say,” House Energy and Commerce Committee ranking minority member Henry A. Waxman (D-Calif.) told BNA, referring to Republicans. “They say they are going to repeal and replace—but what is their alternative?”

House Republican leaders in the fall of 2010 unveiled a document touted as a policy agenda outlining their ideas for dealing with the budget deficit, taxes, health care, and national security.

Regarding health care, the document said Republicans will “immediately take action to repeal” the reform law, opting to replace it with proposals they touted during the congressional health care debate.

Those include malpractice reform, allowing insurance purchases across state lines, and making it illegal for an insurance company to deny coverage because of pre-existing conditions.

Some Republicans want the House to vote on legislation that only would repeal the health care law, while others favor a repeal and replace strategy.

Most of those interviewed by BNA expect Republicans and Democrats to regularly engage in rhetorical battles over the law, but little of consequence is likely to be changed as long as Democrats control the Senate and the White House.

“I don’t think anything major is going to happen,” said health care consultant Lawrence S. Goldberg. “First, there is little except for [Medicare] provider changes scheduled for 2011. Second, it will not be easy for the Republicans in the Senate to execute and, of course, difficult to override a presidential veto.”

“Compromise will be tough to find in much of this, but with 23 Democratic senators [facing re-election] in 2012, and the president’s approval rating hovering in the low 40s, Republicans in Congress will want to do everything they can to prove their fiscal bona fides to their respective constituencies,” such as the Tea Party, a health care lobbyist told BNA.

**Premium Support Debated.** A proposal by new House Budget Committee Chairman Paul Ryan (R-Wis.) to turn Medicare into a premium support system also is likely to be discussed in Congress, said Joe Antos, an analyst in health care and retirement policy at the American Enterprise Institute.

The idea is controversial even among Republicans and so it is not likely to gain much traction, he added.

Under Ryan’s proposal, individuals turning age 65 in 2021 or later would not enroll in the current Medicare program but, instead, would receive a voucher with which to purchase private health insurance. Critics of such a plan say the value of the voucher would not keep up with health care costs, resulting in higher health care costs for seniors.

**Piecemeal Repeal.** Incoming House Energy and Commerce Subcommittee on Health Chairman Joseph R. Pitts (R-Pa.) said Republicans will hit the ground running in January in hopes of toppling the law.

“There’s two ways to repeal—there’s wholesale repeal and there’s piecemeal repeal,” he said. “Wholesale repeal will pass the House, but it won’t get through the Senate or the president. So we’ll have to do it both ways.”

Regarding the piecemeal approach, Pitts said, “There’s some low-hanging fruit, and we’ll use it as a way to do oversight of the various aspects of the law.”

Pitts said some of the piecemeal repeal strategy will focus on the provisions in the law that will be implemented soon, such as the medical loss ratio for insurers, which was implemented Jan. 1.

“So we’ll have to look at the timeline as far as structuring some of this,” Pitts said.

**Defunding the Law.** House Republicans are likely to try to defund the law through the appropriations process, but it is unclear how successful that strategy may be since final appropriations measures will have to be negotiated with Senate Democrats and the White House.

Those interviewed by BNA do not believe Republicans will risk shutting down the operations of the federal government over funding for the health care reform law.

“We’re not shutting down the government over whether they have the money to fund this,” a Senate Republican aide told BNA, referring to the White House and the health care reform law.

“There’s not going to be a shutdown of anything,” Antos added.

A peek into Republicans’ strategy to defund the health care reform law came on Dec. 9, 2010, when Sen. Tom Coburn (R-Okla.) criticized a bill crafted by Senate Democrats to fund the federal government for the remainder of fiscal year 2011.

Coburn called the appropriations measure a “Trojan horse” to help fund the health care law.

Coburn said the bill, which was subsequently withdrawn by Democrats and replaced with a measure funding the federal government until March 4, contained billions of dollars related to the health care law.

Among other items, Coburn criticized the bill for including \$19 billion for the IRS for work related to the health care law, and \$3.6 billion for the office of Centers for Medicare & Medicaid Services Administrator Donald M. Berwick, which Coburn said was an increase of \$152 million from the FY 2010 funding level.

### CBO Report on GOP Repeal Legislation

House Republican legislation (H.R. 2) to repeal the health care reform law would increase the federal budget deficit by \$145 billion from 2012 to 2019, and \$230 billion from 2012 to 2021, the Congressional Budget Office said Jan. 6.

In a 10-page analysis of the Repealing the Job-Killing Health Care Law Act, introduced Jan. 5, CBO said the repeal bill also would “increase federal deficits in the decade after 2019 by an amount that is in a broad range around one-half percent of” the Gross Domestic Product, or about \$1.2 trillion.

The House is scheduled to begin debating the repeal bill Jan. 7. A vote on the bill has been scheduled for Jan. 12. The CBO analysis is available at <http://op.bna.com/hl.nsf/r?Open=lroi-8culrh>.

“Members of Congress who campaigned on defunding the misguided health law Congress passed last year

should oppose this trillion dollar spending bill,” Coburn said in a press release.

The new funding law contains no money for implementing the health care law, setting up a possible clash between Democrats and Republicans over the issue in March.

**‘Murky’ Path Forward.** A Senate Republican aide acknowledged there is going to be “a lot of shooting back and forth” between Democrats and Republicans over the health care law, but the aide said Republicans’ strategy to fight the law may get murky after the House bill to repeal the law fails to advance in the Senate.

The aide said Republicans will face “problematic messaging issues” in their attempt to stop the law from being implemented.

For example, it may be difficult for Republicans to say they favor eliminating pre-existing medical conditions from rules governing issuance of policies while also supporting repeal of the insurance coverage mandate because that would allow individuals to wait until they got sick to get coverage, thus penalizing those already paying for insurance, the aide said.

“We haven’t grappled with the rhetorical issues,” the aide said.

The aide said the appropriations route for dismantling the health care law is unlikely to work because the White House probably can proceed with existing funding until the next election.

Increased oversight of the law is likely from the next Congress, “but that is not actually changing anything,” the aide added.

The aide said the list of provisions that may come under scrutiny by Republicans is not “extensive” in any case.

**Focusing on the Economy.** Public opinion polls have found that Democrats lost seats during the November 2010 election because they focused too much on health care reform at the expense of measures to improve the economy.

The Senate GOP aide said Republicans will run the same risk in 2011 if they focus too much on repealing the law while the economy sputters.

“Republicans have to walk a fine line of keeping the pressure on without making [repealing the health care law] their great, white whale,” the aide said.

Congressional Democrats plan to counter Republican criticism of the law by launching a counterattack of their own.

For example, House Ways and Means Subcommittee on Health ranking minority member Fortney Pete Stark (D-Calif.) in December 2010 released a report that highlighted the benefits of the law and what could happen if it were repealed.

The report, *Dangerous to America’s Health: The Republican Plan to Dismantle America’s Health Care*, highlighted numerous provisions in the law that Stark said will improve the U.S. health care system.

The reform law “is already providing health coverage to people with pre-existing conditions and young adults, and lowering drug costs for seniors,” Stark said in a press release. “In time, it will help millions more.”

Stark in the report said the law “improves the entire health care system—from a revamped marketplace where individuals and small businesses can buy coverage; to Medicare improvements for seniors; to delivery

system reforms that improve primary care and make most preventive care free.”

Repealing the law also would raise prescription drug costs for seniors because over time it fills in the gap in coverage in the drug law, Stark said.

**Federal Budget Savings.** Many of the provisions in the law targeted by Republicans will save billions of dollars once implemented, according to the Congressional Budget Office, and thus repealing them will be difficult due to concern about the rapidly increasing federal debt, congressional aides and lobbyists said.

### Changes to Health Care Committees

With Republicans now the majority party in the House, committees with jurisdiction over health care issues will have GOP majorities and new chairmen in 2011.

The House Ways and Means Committee will be led by Rep. Dave Camp (R-Mich.), while its health subcommittee will be led by Rep. Wally Herger (R-Calif.). The former Democratic chairmen of those committees, Reps. Sander Levin (D-Mich.) and Fortney Pete Stark (D-Calif.), respectively, will serve as ranking minority members.

The House Energy and Commerce Committee will be led by Rep. Fred Upton (R-Mich.), while its health subcommittee will be led by Rep. Joseph R. Pitts (R-Pa.). Rep. Henry A. Waxman (D-Calif.) will serve as ranking minority member on the full committee, while Rep. Frank Pallone Jr. (D-N.J.) will be ranking minority member on the health subcommittee.

Democrats retain their majority in the Senate, so the chairmen of the committees with health care jurisdiction remain. Sen. Max Baucus (D-Mont.) will lead the Senate Finance Committee, while Sen. Tom Harkin (D-Iowa) will head the Senate Health, Education, Labor, and Pensions Committee.

Sen. Chuck Grassley (R-Iowa) has moved from Finance to the Judiciary Committee, so Sen. Orrin G. Hatch (R-Utah) is the new ranking minority member on Finance. Sen. Michael B. Enzi (R-Wyo.) remains the ranking minority member on the HELP committee.

The same holds true for GOP wishes to scale back provisions in the new health care law that cut Medicare funding for managed care plans—Part C of the program, those interviewed said.

“A lot of our guys care about it, but I don’t think they can do anything about it” because it would cost money to increase the Medicare reimbursement levels established in the health care law, a Senate GOP aide said.

The aide also said Republicans do not wish to be allied with health care insurers, which are unpopular with the public, and letting the cuts go ahead will further damage Democrats’ standing with seniors.

“If [the Medicare Advantage program] goes under, it will be totally [Democrats’] fault, and they are already in trouble with seniors,” the aide said.

The law will freeze Medicare Advantage payments beginning in 2011. Starting in 2012, it will reduce MA payment benchmarks relative to current levels. MA payments would be reduced about \$200 billion over 10 years under the law.

CBO said in early 2009 that before the reform law was passed, Medicare managed care enrollment would have grown from 10.6 million in 2009 to 13.9 million in 2019. It said the health care reform bill would result in managed care enrollment of 9.1 million in 2019.

**Oversight Hearings.** House Republicans are expected to hold numerous oversight hearings on the health care law to draw attention to what they say are its numerous problems. CMS Administrator Berwick, who was put into his job by President Obama via a recess appointment, is expected to appear early and often in the House.

Berwick “will have the equivalent of his confirmation hearing once a week in the House,” Antos said.

A House Republican aide added: “I think everyone wants a shot at him.”

Berwick’s appointment expires at the end of 2011, leaving CMS again without a leader as it tries to implement many provisions from the health care law. Given the contentious relationship between the White House and Congress over health care, it is possible the agency will not have more than an acting administrator in the foreseeable future, according to those interviewed by BNA.

“The administration will have to either identify a candidate who is less polarizing and more acceptable to Senate Republicans or continue the course of recess appointments or acting administrators,” Eric Zimmerman, an attorney with McDermott, Will & Emery in Washington, said. “Without a congressionally approved leader, the agency and the administration’s health reform implementation objectives will suffer.”

**Physician Payment Issues.** Lawmakers later in 2011 again will have to grapple with overhauling Medicare’s physician payment system. Congress has passed legis-

lation freezing doctors’ pay for 2011 but new policy will be needed before the year is over.

Permanently fixing the system is an issue that has haunted both parties for several years, since a permanent repair likely will cost hundreds of billions of dollars. Only a concerted effort involving the White House and congressional Republicans and Democrats likely will produce a permanent fix, the Senate Republican aide told BNA.

Due to its high cost, fixing the system permanently “will require the White House and House and Senate Democrats and Republicans to solve,” the aide said. “They all have to be in the room and they all have to own it.”

Even though Democrats and Republicans have pledged to find a permanent solution to the issue, those interviewed by BNA said the exorbitant price tag associated with such legislation will make it difficult to put a new system in place.

“Regrettably, we’re probably looking at more short-term fixes,” Zimmerman said. “Comprehensive solutions are too expensive and elusive, and Congress missed its best opportunity—i.e., health care reform—to do something bold to address this problem.”

Pitts said he plans to sit down with physicians and other stakeholders to discuss ways to fix the system, but he acknowledged a permanent solution will be expensive.

The House Republican aide said lawmakers also are likely to seek input from CBO and the Medicare Payment Advisory Commission in trying to craft a new payment system for doctors.

“It’s a tough one,” the aide said. “It’s going to be a long process.”

BY STEVE TESKE

*The Republican bill to repeal the new health care law (H.R. 2) is available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2ih/pdf/BILLS-112hr2ih.pdf>.*