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The Future of Obamacare

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Since 2010, the fate of the Patient Protection and Affordable Care Act (ACA) has been uncertain. The ACA was a historic achievement for the Obama administration and Congressional Democrats. But it passed Congress without a single Republican vote, and the GOP subsequently mounted legal and legislative challenges to Obamacare, vowing to repeal and replace it.

The Supreme Court decision in June 2012 upholding the ACA's constitutionality dealt a serious blow to the law's opponents. Now, in the aftermath of the 2012 elections, with President Barack Obama reelected and Democrats maintaining majority control of the Senate, Republicans lack a viable option for overturning the law through legislative or executive action. There will be no Republican in the White House before 2017 at the earliest, and by then the ACA's core provisions will have been in effect for 3 years (see timeline).[1] It's difficult to take benefits away once they're in place — one reason that many Republicans saw the 2012 elections as their last chance to derail Obamacare.

Republicans can still target politically vulnerable provisions of the law — such as the Medicare Independent Payment Advisory Board. House Republicans may use their leverage in budget negotiations to try to extract concessions, such as postponing selected provisions, cutting funding for implementation, and granting states more discretion. But these tactics of delay, defunding, and devolution ultimately cannot stop the ACA from moving forward. As Speaker of the House John Boehner (R-OH) conceded after the election, the ACA is "the law of the land."

Now that the threat of repeal has faded, what is the future of Obamacare? What challenges and conflicts lie ahead on the long road of implementation for health care reform?

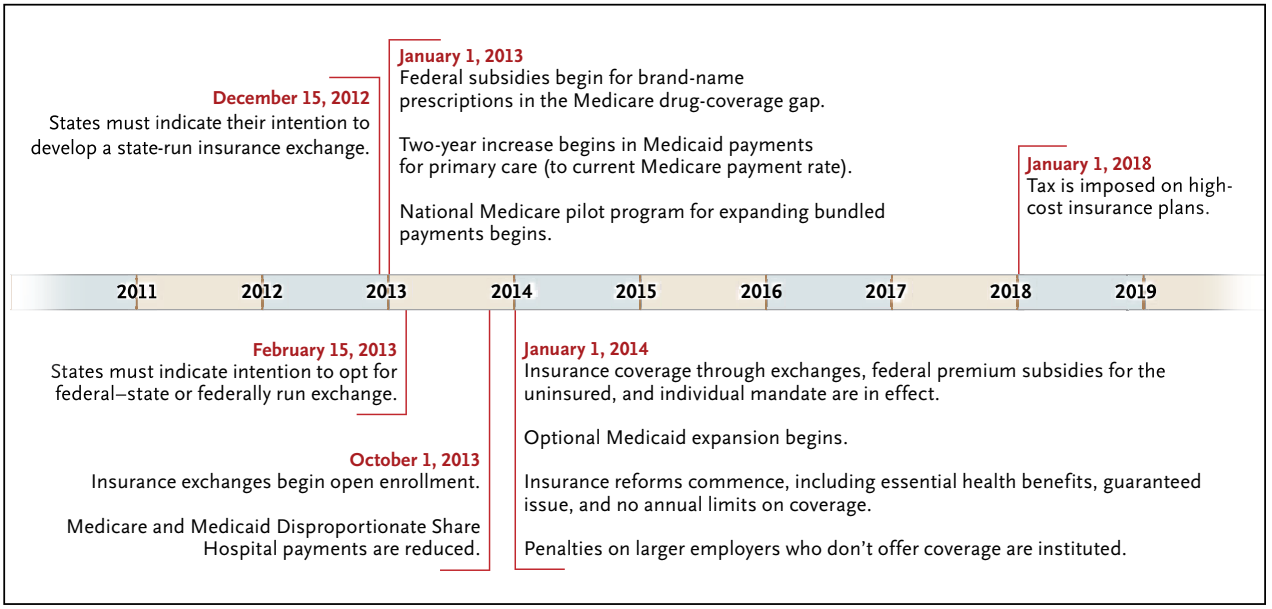
In the short term, the spotlight is on the states. States are grappling with their role in establishing health insurance exchanges — regulated marketplaces where the uninsured and small businesses will shop for coverage. Initially, 16 states and the District of Columbia will operate their own exchanges. Another 15 have, to date, refused to create ex-

changes, so the federal government will operate exchanges in those states. Seven states will partner with the federal government to cosponsor an exchange, and the remaining 12 states still must decide what to do.[2] Obamacare opponents hope that because of an error in the ACA's text, subsidies for the uninsured to purchase insurance will not be available in federal exchanges. The Obama administration, however, argues that the law's intent to provide subsidies in both state and federal exchanges is clear. Thus, the legal battles over reform, which also include lawsuits challenging mandated contraception coverage, are not yet over.

As exchanges are developed, other questions about their operation loom. How ready will federal and state exchanges be for the first enrollment period scheduled to begin in October 2013? How will these new marketplaces — and the promise of enhanced choice and competition — fare in states where one insurer currently dominates the individual insurance market? And will exchanges expand over time? At first, exchanges will reach only a modest portion of the population, including the uninsured and workers in small businesses. Starting in 2017, though, exchanges can enroll workers in larger firms, which could increase their scope and influence. That year, states will also be eligible for innovation waivers to craft their own reform plans within federal guidelines.

States must also decide whether to expand eligibility for their Medicaid programs. The Supreme Court effectively made the ACA's Medicaid expansion optional, and some governors are refusing to extend their programs even though the federal government will initially pay 100% and eventually 90% of the costs for newly eligible enrollees. Most low-income, uninsured residents in states that do not expand Medicaid will be ineligible for subsidies in the exchanges and will therefore remain without coverage. The hospital industry could become a powerful advocate for states to accept additional federal Medicaid funds: without the expansion, hospitals still face the prospect of reduced Medicare reimbursement and cuts in payments for seeing a disproportionate share of low-income patients but won't have enhanced Medicaid coverage to help offset their losses.

State resistance to Medicaid expansion and exchanges highlights a broader issue: Obamacare emulates the successful formula that Massachusetts has used to increase access to insurance, but it cannot copy the state's political environment. Health care reform in Massachusetts enjoyed broad bipartisan support. It remains to be seen whether the ACA's individual mandate will have the same impact in states whose citizens are less supportive of reform and whose political leaders oppose the law. Moreover, will states that only reluctantly expand Medicaid and sponsor exchanges be as successful as



more enthusiastic states in enrolling eligible persons into Medicaid and insurance-subsidy programs? Even after the law is fully implemented, the Congressional Budget Office estimates that 30 million U.S. residents will remain uninsured. Will Obamacare's coverage provisions grow stronger or weaker over time?

In addition, there remain political challenges to getting more Americans behind the ACA. More than two and a half years after its enactment, the public is still deeply divided over Obamacare, with more Americans disapproving than approving of the law. That division reflects partisan polarization, the contentious debate over the law's enactment, and the legacy of "death panels" and other myths spread by opponents to stoke the public's fears. Those fears are enduring: 39% of Americans still incorrectly believe that the ACA creates a government panel to make end-of-life care decisions for Medicare beneficiaries, and another 22% aren't sure whether it does.[3]

Yet the ACA's public-opinion problem may also reflect the absence of a clear programmatic identity: unlike Medicare and Social Security, Obamacare does not have a well-defined population of beneficiaries, and its benefits are diffuse. In fact, the ACA is not so much a program as a series of programs, regulations, subsidies, and mandates that fill gaps in the current patchwork insurance system. It treats different groups of Americans in different ways at different times, which complicates efforts to explain the law, enroll eligible populations into new benefits, and mobilize public support.[4]

Perhaps the most difficult long-term challenge facing Obamacare is cost control. The ACA does contain substantial savings in Medicare, but limits on other spending are less robust. The law initiates a broad array of experiments in medical care delivery and payment reform whose success is highly uncertain. However, as Medicare's own historical transformation from passive bill reimburser to colossus of prospective payment shows, once the federal government begins paying for medical services, the political equation changes.[5] Cost-containment measures intensify as policymakers struggle with the fiscal consequences of health insurance programs. Ongoing pressures to curtail the federal budget deficit will only strengthen the resolve to hold down spending under the ACA.

But there are important differences between Obamacare and Medicare: for starters, the adult uninsured population lacks the political clout of seniors. As a result, pressures to reduce spending could trigger cutbacks in the ACA's benefits and financial protections. Already, there are calls for curbing the law's subsidies that will help the uninsured buy coverage as part of a bipartisan budget deal — an extraordinarily bad idea, given the limited scope of those subsidies. Fiscal pressures will also generate demand for additional Medicare and Medicaid savings while making it harder to renew temporary ACA policies such as those increasing Medicaid payments to primary care doctors.

Even as repeal fades from the agenda, then, there are many important political fights to come that will shape the future of Obamacare. The outcome of struggles over insurance subsidies and benefits, costs and financing, Medicaid and many other issues will determine whether the ACA is maintained, expanded, or undermined.

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