



MID-TERM ELECTION RAMIFICATIONS AND YOU

The mid-term elections are now over and it looks as though the Senate will ultimately have a 54-46 Republican majority after Alaska and Louisiana finish their housekeeping. The House Republicans will expand their advantage to levels not seen since the 1920's. So what is on the horizon for healthcare and Obamacare in particular? We still have President Obama as the chief executive who can veto any measure. If you recall your high school civics, a two-thirds vote by the Senate and House is required to over-ride a Presidential veto. What does this say about the next two years in healthcare? What does this tell us about your practice for the next two years?

Let me start by saying that no one has a magic ball and most pundits' knowledge of healthcare is minimal. So take what you hear with a grain of salt. Secondly, the country is more partisan than at any time in recent memory. Once more the pundits tend to dramatize this to civil war levels, but we seem to be losing our center making compromise difficult. With these provisos, let's try to see what the landscape will look like over the next two years and determine what can and cannot be accomplished.

To begin with, realize that 100% of the newly elected GOP senators campaigned on repealing Obamacare. As newly elected senators, they will want to honor their promise. Therefore, expect the House and the Senate to pass a full repeal of the Affordable Care Act. The President will not accept this and immediately veto it. There will not be enough votes to over-ride this veto. Okay, we got that one out of the way.

Given that there will not be enough votes to over-ride the Presidential veto, Congress may try to chip away at parts of Obamacare by focusing on issues that have popular bipartisan appeal. For example, Congress may attempt to remove the device tax and the Independent Payment Advisory Panels (called by some as death panels). The largest device manufacturers are in states with Democratic senators who would be more than willing to support such a measure. The companies and states are as follows:

- [Johnson & Johnson](#) (New Jersey)
- [Medtronic](#) (Minnesota)
- [Baxter](#) (Illinois)
- [Stryker](#) (Michigan)
- [Boston Scientific](#) (Massachusetts)
- [St. Jude](#) (Minnesota)

Poll after poll shows that voters hate the individual mandate. This mandate requires individuals to have health insurance or incur a penalty. At the present time, prices are somewhat held down for Obamacare because younger healthy people support elderly sicker patients by paying more into the system for insurance than they can expect to use as a group. Without the mandate younger people may choose to go without insurance, making the insurance much more expensive. The mandate is critical to the law, therefore expect an Obama veto should Congress decide to attempt to eliminate the individual mandate.

One big area of Republican concern is the "risk corridors". These are financial guarantees to insurance companies in case of loss. It does seem inappropriate that the insurance companies are given a bail out when no one else receives similar consideration. Wouldn't you love to have a business where you can succeed and collect profits, but if you fail you are reimbursed from the government? In any event, if the insurance companies don't have these risk corridors, insurance prices will rise because they will have to raise their prices to cover any expected shortfall. Expect another Obama veto of any attempt by Congress to eliminate risk corridors.

Republicans may introduce a lower cost, high deductible plan that doesn't meet Obamacare coverage requirements. But once more, this may remove younger people from the equation. Items that remove younger individuals will ruin the careful balance of risk and thus raise the cost. Expect a presidential veto.

We have discussed possible inroads into Obamacare and their possible conclusions when reaching the President's desk. What we have not mentioned is the process by which some of these actions may be taken.

In order to accomplish the repeal of fringe items, Congress can rely on a bipartisan approach. When things get dicey, the majority may very well attempt to pass it by tying it to a financial bill via a process called reconciliation which only requires 51 votes and thus avoid filibuster. Remembering the possibility of veto, they may attempt to tie it to continuing resolutions and budgetary measures wanted by the President.

Another item that needs to be considered in relation to the unpopular law is the increase in hearings and investigations into Obamacare. Now that the Republicans are in charge of the Senate, they will start to ramp up oversight. This might make for some very interesting headlines.

It is difficult to propose replacements for Obamacare if the law is still in place. Once more, an attempt by Republicans to decrease the burden may be attempted. One such measure could be to offer individuals tax credits to buy private insurance.

The bottom line is that as long as the President remains in office, Obamacare and its effects on your practice will remain in effect. Expect to see some changes at the edges, but in the end, for most patients and physicians, expect "more of the same".

HARD NUMBERS AND PHYSICIAN PARTICIPATION IN OBAMACARE

We have some hard numbers. It appears, to date, 214,000 physicians are not participating in Obamacare. That is roughly a quarter of the almost 900,000 physicians in America. In January, it was estimated roughly 70% of California physicians were not taking Obamacare plans. The number one reason for not accepting Obamacare is that it does not make financial sense. "It is estimated that where private plans pay \$1.00 for a service, Medicare pays \$0.80, and ACA exchange plans are now paying about \$0.60," a study by the think-tank American Action Forum finds.

If you are trying to get a sense of what California is doing this should give you a clue. Covered California is setting their rates to align with Medi-Cal. Medi-Cal rates are by far the lowest rates known and most physicians cannot practice medicine with these reimbursement rates.

Doctors are further worried about deductibility. 75% of ACA patients choose a high deductible plan. Given that most patients, so far, are low income, the doctors correctly surmise that they won't be paid because of the high deductibles.

Finally, an insurer is required to cover an ACA recipient for 90 days after stopping payment. But the insurers only need to pay physicians for the first 30 days. The physicians are responsible for their own payment for the next 60 days of coverage. Roughly 1 million recipients have stopped payments and left the burden to the physician to collect.

POST-ELECTION RELEASE OF INSURANCE RATES

We will finally discover the new insurance rates for Obamacare. The administration purposely did not release them prior to November 4, not wanting to hurt their election chances. Lot of good that did! Enrollment, though, begins on November 15, leaving only 11 days to discover the mystery numbers. As previously mentioned, some states will see double digit rate increases. In the past, new prices were always announced 60 days before taking effect on January 1. Many voters' insurance plans are to be cancelled and notification usually takes place 60-90 days ahead of cancellation. This was placed on hold for the election as well. The truth is about to come out and it won't be pretty.

PROPOSITION 46 FAILS

Proposition 46, which would have raised malpractice rewards and therefore, your malpractice rates, failed to pass. It would have raised pain and suffering limits from \$250,000 to \$1.1 million and required drug and alcohol tests for all physicians. Expect the trial lawyers to keep on trying.

TOGETHER, WE CAN SURVIVE

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