



Perspective

The War Isn't Over

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Health care reform advocates will and should celebrate their history-making legislative success. For many, the past year has been all health care all the time. Celebration should be limited,

however. Major challenges lie ahead, and hard work remains to be done. Opponents will continue, and probably intensify, their opposition. They have promised legal challenges and are likely to seek repeal of all or part of the legislation. Moreover, formidable implementation hurdles must be surmounted if health care reform is to achieve its goals.

On the political front, Republicans unanimously opposed the final bill in both the House and the Senate. They have expressed outrage at the Democratic leadership's decision to "ram through" reform using budget reconciliation to modify the Senate-passed bill sufficiently to make it acceptable to the House. The outrage

is baseless, but the fury is real and will poison future debate.

The first political testing ground will be the November 2010 midterm elections. Republicans have pledged to make the substance of the reform and the procedures used to enact it central to these elections. The Democratic majorities in both chambers of Congress are likely to be reduced, probably by even more than is usual for an off-year election. With 2010 gains under their belts, opponents will almost certainly continue and intensify attacks on the reform legislation during the 2012 presidential and congressional campaigns; they may well regain control of the Senate — 21 Democrats and 2 independents

who vote with them, but only 10 Republicans, will be up for reelection — and could win the White House.

The reform legislation's implementation schedule gives these political possibilities particular salience. Although many provisions of the bill will take effect immediately or soon after enactment, implementation of the big-ticket items is deferred. The individual and employer mandates, the subsidies to make insurance affordable, the Medicaid expansion, and major insurance-market reforms will all start in 2014. And the tax on high-cost insurance plans goes into effect in 2018. Given the intensity of Republicans' opposition to the substance and manner of passage of this reform, if the GOP regains the presidency and control of Congress in 2012, implementation could be substantially delayed or the law could be significantly

modified or even repealed before its major elements have been implemented.

Making the legislation a success requires not only that it survive but also that it be effectively implemented. Although the bill runs to more than 2000 pages, much remains to be decided. The legislation tasks federal or state officials with writing regulations, making appointments, and giving precise meaning to many terms. Many of these actions will provoke controversy. Performing them will take staff, money, and time. Given the current federal deficit and beleaguered state treasuries, needed staff and funding will be hard to come by.

Even with adequate resources, implementing health care reform will be complex and difficult. Much of this challenge is inherent in the complicated and diverse ways in which health care is delivered and paid for in the United States. Part of the challenge arises from the likelihood that as implementation proceeds, unforeseen challenges will emerge.

To get some flavor of what lies ahead, consider the following. The law provides for income-based credits payable by the federal Internal Revenue Service (IRS) to insurers on behalf of households that apply for coverage through state-managed health insurance exchanges. IRS filing units (whether individuals, couples, or families) are not always the same as the units covered by a health insurance policy. Eligibility for health insurance subsidies should be based on current income, but the IRS has income information only for past years. Mechanisms for exchanging income information between the IRS and the state insurance exchanges will need to be developed, as will ways of

handling subsidies when definitions of a family unit vary and when family composition or income changes significantly between the time that taxes are filed and the time when insurance subsidies are to be delivered.

Other issues arise because the legislation asks state officials, some of whom oppose the reform, to play a large part in its implementation. The bill calls on each state to set up its own health insurance exchange and permits the exchanges to operate under widely varying rules. For example, states may establish separate exchanges for individuals and for small groups and may create a basic plan for individuals and families with incomes between 133 and 200% of the federal poverty level. Insurers need not offer the same plans in the exchanges as they do outside them. Averting insurance-company competition that is based on risk selection will require aggressive state oversight, which some states may be unwilling or unable to provide.

These responsibilities will be terra incognita for many state administrators. Even when goodwill prevails, administrators will find implementation very difficult. However, the experience of the Commonwealth Connector, the exchange through which Massachusetts residents without employer-provided insurance obtain affordable coverage, offers encouragement that these difficulties can be overcome.

Furthermore, parts of the reform are bound not to work as expected. For example, the legislation calls for extending Medicaid to everyone with an income below 133% of the federal poverty level. Medicaid rolls in some states will expand by 50% or

more. It is unclear whether these states will be able to find enough providers who are willing to accept the anticipated payment rates to serve this expanded population, even as the demand from better-paying patients for services is growing. If they don't, will they raise provider payment rates, curtail Medicaid benefits (as states are legally authorized to do), or simply let patients fail to find doctors who are willing to provide them with care?

To further complicate matters, some families may be able to buy insurance in several distinct ways, depending on their income, family composition, and state policy. Different family members may be eligible under Medicaid, under the Children's Health Insurance Program (CHIP), through the exchanges with subsidies, through the exchanges without subsidies, or through a yet-to-be-created state basic health insurance plan. If employers offer plans that meet federal standards and cost households no more than stipulated fractions of the worker's income, employees will not be eligible for insurance through exchanges, but if employment-based insurance does not meet federal standards or is too costly, employees will have the option of buying insurance through the exchanges — with or without subsidies, depending on income. Small changes in income can push some, but not all, family members from one form of coverage to another — for example, from Medicaid or CHIP to the basic plan to the exchanges. Negotiating this maze will be a challenge for many health care seekers, particularly low- and moderate-income families. Providing ample counseling will be essential. These and myriad other implementation

difficulties will fuel continued political controversy.

Passage of health care reform legislation is a cause for celebration. But supporters must not relax. They should prepare to meet the serious challenges that remain. If those challenges are not recognized and surmounted, health care reform could go the way of the Medicare Catastrophic Coverage Act of 1988. That bill, enacted with almost self-congratulatory

enthusiasm, provoked vociferous resistance from some observers and was repealed 16 months later. If supporters of the current reform meet the remaining challenges, its course could instead resemble that of the Medicare drug bill, which was widely regarded as a case study in efficient and effective implementation.

Far from having ended, the war to make health care reform an enduring success has just begun.

Winning that war will require administrative determination and imagination and as much political resolve as was needed to pass the legislation.

Disclosure forms provided by the authors are available with the full text of this article at NEJM.org.

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This article (10.1056/NEJMp1003394) was published on March 24, 2010, at NEJM.org.

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