

Health reform in the 112th Congress — What should we do in 2011?¹

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In March 2010, the President signed into law the Patient Protection and Affordable Care Act, followed by the Health Care and Education Reconciliation Act of 2010. Together, these two pieces of legislation constitute what is commonly referred to as “Obamacare,” representing the most significant restructuring of our healthcare system in decades. Everyone agrees that the healthcare system in the United States needed (and still needs) fixing—it costs too much, quality is inconsistent, and outcomes oftentimes vary inappropriately and based on an individual’s economic status. So does Obamacare fix what is broken? To a certain degree it does, but from the political left to the political right, most Americans (including the President) are saying that Obamacare itself needs to be fixed.

So what’s missing from Obamacare? First, Obamacare placed too much emphasis on providing all Americans with health insurance coverage and not enough on fixing a broken system. We need to focus on the fundamental problems that are creating waste and inefficiency, starting with a systemwide **failure to properly apply general principles of insurance to healthcare**. Insurance is meant to provide individuals with financial protection against large, unexpected losses. When used in that way, **insurance works**, such as in the market for automobile and fire insurance. When insurance is used to pay for smaller, routine, day-to-day expenses, insurance does not work, thereby creating an inefficient and wasteful financing mechanism.

Should we “tweak Obamacare” as some would argue, or should we “repeal and replace” it, as the other side demands? Let’s be pragmatic and do what works, consistent with a set of consensus goals for fixing healthcare in this country. The mission, in my view, is to keep the system private, ensure

access to all Americans while preserving choice, and not bust federal or state government budgets. The following are **provisions for health reform that are in the bill... and should REMAIN**.

EXISTING PROVISIONS OF OBAMACARE	COMMENTS/SUGGESTIONS
Elimination of restrictive underwriting practices (e.g., exclusions for pre-existing conditions), rescissions, and most annual and lifetime limits to coverage.	These are significant, important, and worthwhile accomplishments of the new law.
Creation of “Health Insurance Exchanges” at the state level, providing cost-effective access to private insurance to certain underserved groups, primarily individuals, small businesses, young adults, and early retirees.	Insurance is predicated upon “pooling” of risk. The creation of Exchanges (a “pool” for individuals and small employer groups), if properly structured, can and should provide near universal access to all Americans at affordable prices.
Coverage of preventive services at no cost.	The market was already moving in this direction, with Health Savings Accounts (HSAs) providing preventive services at no cost, and certain insurance carriers moving in this direction for their preferred provider organization (PPO) and health maintenance organization (HMO) products.
Level the tax “playing field” by limiting deductions or taxing the richest benefit plans (i.e., a “Cadillac Tax”).	A cap on deductions will encourage the growth of HSAs and other innovative and more efficient ways to purchase health insurance.
Various cost-containment procedures. Various quality-improvement provisions. Programs to promote wellness and prevention.	These are worthwhile objectives of health reform that should be retained, but Obamacare relies too much on a new and highly bureaucratic infrastructure that is expensive at best and ineffective at worst. These objectives can be best accomplished through a system promoting healthy lifestyles and personal responsibility tied to financial incentives.



¹ This is an update to an article written in November 2009 (available at the Risk Management Partners LLC Website) describing what’s good, what’s bad, and what’s missing from the House of Representatives’ Health Reform Legislation (HR 3962) prior to final legislative action taken in the Senate, which ultimately led to Obamacare.

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The above represent positive aspects of Obamacare that need to be retained or, if the bills are ultimately repealed, need to be included in any “replacement” legislation. On the other hand, below is a list of provisions of Obamacare that potentially cost the American people too much or offer solutions not likely to resolve the root problems of our current healthcare system. The following are **provisions that should NOT be a part of health reform...but ARE** (and therefore need to be repealed).

PROVISIONS FOR REPEAL	COMMENTS/SUGGESTIONS
Requirement to submit IRS Tax Form 1099 to report any business transaction of \$600 or more.	This has nothing to do with health reform and is an unnecessary and expensive burden placed on business.
Creation of a new, voluntary long-term-care insurance program (the “CLASS” act).	This is a new government program that is arguably unnecessary since insurance of this type is available in the private sector. Furthermore, we don’t know how much it will cost and cannot afford it.
Elimination of the Medicare Part D coverage gap (or closing of the “donut hole”).	What is the government’s strategy for Medicare in general and Part D in particular? This provision should be repealed because it perpetuates an entitlement mentality with no limits on cost. See “Fix Medicare Advantage” in the next section.
Expansion of Medicaid coverage to 133% of poverty level.	This is another expansion of insurance coverage without fixing the underlying, broken system. The federal government provides temporary payments to states, which will go away. We should leave it to the states to fix this problem.
Employer requirements for their employees: <ul style="list-style-type: none"> • Cover 72.5% of single premiums. • Cover 65% of family premiums. • Meet the definitions of a “qualified plan.” 	Many businesses, particularly small businesses, do not currently provide this level of coverage. This provision will be a significant added expense burden for many businesses, and they will be taxed or penalized for failing to meet this requirement.
Individual mandate to purchase insurance. Employer mandate to purchase insurance.	Federal government should provide for access to good coverage through the private market at reasonable cost, and the Health Insurance Exchanges accomplish this (if properly structured); leave decisions about employer or individual mandates to state government (e.g., Massachusetts).
Government decisions about minimum standards for benefit packages (expected to be set at high, comprehensive levels).	This will reduce the attractiveness and perhaps the viability of more efficient plans that promote personal responsibility, such as HSAs. Eliminates mini-meds for young, part-time, or low-income workers.
Creation of a vast new bureaucracy to administer Obamacare.	There are many new taxes and tax credits: new “fees” and certain financial penalties; grants for wellness programs; subsidies to purchase through the Exchanges; increase in the floor on medical deductions (7.5% to 10%), new restrictions on HSAs, and more. The associated costs are enormous and need to be pared back.

As we reconsider Obamacare and health reform in general, there is an essential role for government, but what is it? To meet the objectives outlined above, the appropriate role for government is not to be an insurance company (e.g., Medicare), where the government negotiates with doctors and hospitals, sets the rates of payment, and cuts the checks. Furthermore, it is not the proper role of government to dictate to individuals and businesses whether and how to purchase health insurance. Rather, government’s proper and necessary role is to facilitate true competition, based on cost and quality, between private insurance companies, and to require high levels of transparency needed to allow these markets to operate fairly and efficiently.

Coming back to our original mission—the fundamental need is to properly apply general principles of insurance to the healthcare industry, and there are some additional commonsense provisions beyond the current Obamacare model needed to accomplish meaningful reform of the system. We conclude with the following **provisions that should be in any health reform package...but ARE NOT in Obamacare.**



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HEALTH REFORM PROVISIONS STILL MISSING	COMMENTS/SUGGESTIONS
Promote Consumer Driven Health Plans (CDHPs), such as HSAs and Health Reimbursement Accounts (HRAs).	Employees and other individuals who purchase and use health insurance must have “skin in the game.” Auto and fire insurance work because people do not want to make a claim. Health insurance will work when it primarily covers serious illness or injury, so people are motivated and financially rewarded for staying healthy.
Increase competition.	Everyone agrees that we need more competition in the current health insurance system. Allowing private health insurers to compete across state lines is painless and inexpensive.
Fix “Medicare Advantage.”	The federal government should establish a limited number of plan design options, with a “defined contribution” approach to rate setting. These simple steps will increase competition, leading to lower costs and better results.
Fix the Federal Employees Health Benefits Program (FEHBP).	This is an example of an existing Health Insurance Exchange, but it is too expensive because the benefits are too rich. This should be changed and can be a “default” Exchange program or an alternative to the state Exchanges.
Meaningful tort reform.	We know that significant healthcare dollars are wasted on unnecessary and inappropriate care. Reducing the number of frivolous lawsuits will be a big help.
Permit individual purchasing of insurance across state lines. Remove anti-trust exemption for health insurers.	More competition is better. Remove all barriers to selling health insurance across state lines. These changes will enhance competition and “not add a dime to the federal deficit.”

Some final thoughts and practical steps that you can take

We started this discussion with the statement that in order to fix the health system, **we must PROPERLY apply general principles of insurance to healthcare.** Don’t wait for the government to act—take action now. Does your organization incorporate this concept into its health insurance purchasing practices? Do your employees understand why healthcare costs so much and the importance (financially and otherwise) of living a healthy lifestyle?

We must not only “talk the talk,” but also “walk the walk.” Create facts on the ground by applying the principles discussed above to healthcare purchasing for yourself, your business, your municipality and school district, and other organizations in which you may be involved. Send your elected representatives this critique of Obamacare and challenge them to incorporate these principles into their thinking about health reform. By doing so, we will reduce the significant amount of wasted dollars in the system,

giving us the option to expand the safety net if necessary and affordable, using a “defined contribution” or voucher approach.

We can fix the American healthcare system from the bottom up and the top down without spending trillions of dollars and mortgaging the future of our country. At Risk Management Partners LLC, we are helping companies every day to cut the waste in their healthcare expenses. Be part of the solution, and not part of the problem, by contacting us at 610-975-4415.

About David Edman



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