Just the Beginning

If Congress passes health care reform this year, the government will need to spend next year figuring out how to implement it.

By Marilyn Werber Serafini

Ed Howard, executive vice president of the Alliance for Health Reform, is planning the agenda for the annual health care policy retreat in January that the alliance sponsors for members of Congress, and he’s at a loss. “The joke is, are we going to explore ‘What did we do?’ or ‘What did we do?’” he said. “Or is it, ‘What did we leave undone?’”

Next year’s health care agenda depends almost wholly on whether Congress lands a reform bill on President Obama’s desk in 2009, and, if so, what’s in it.

If Congress fails to pass a bill this year, the big question becomes whether Democrats continue pushing a bill in 2010 or whether the parties turn the debate into a political, midterm election battle. Would a collapse have the same drastic consequences as some say it had in 1994? After President Clinton’s health reform effort crashed, Republicans seized control of the House and the Senate.

Conversely, if Congress does pass a reform bill this year, then 2010 would be all about implementation. Although most of the bill’s changes would not become effective for three or four years, implementation planning would begin immediately, bringing serious challenges, including funding.

Authorizing bills typically contain funding for implementation, but health care experts warn that the amount is usually insufficient. “They cannot do implementation on the cheap. They can’t afford it politically,” said Kerry Weems, senior vice president of Vanguard, which builds and operates health information-technology systems. Last year, Weems was acting administrator of the Centers for Medicare and Medicaid Services, the agency that would assume much of the responsibility for implementing health care reform. “At the same time, there are budgetary considerations here. There’s a marvelous balancing act going on.”

Already, said Gail Wilensky, a senior fellow at Project Hope who was a Medicare administrator in the early 1990s, “CMS is woefully underfunded to do the jobs Congress asks it to do.”

Weems said that if the goal is for CMS to just pay bills, it will need less money. But if Congress wants CMS to attack fraud, “then you’re about $500 million short there. Do you want CMS to become a value-based purchaser? Once you start adding on responsibilities, you are 25 percent to one-third under-funded,” he said.

Bills that Congress is considering would place large new responsibilities in the hands of Kathleen Sebelius, the HHS secretary. She is going to be a “very busy woman,” Wilensky predicted, who added that it’s “not stupid” to wait four years to implement many of the reforms.

Indeed, quick implementation of the Medicare Modernization Act of 2003, which created the program’s prescription drug benefit, caused the Bush administration significant angst. The early days were plagued with news headlines about pharmacies turning away beneficiaries empty-handed, and HHS telephone help lines being not so helpful. “This is way bigger than that,” Wilensky warned.

Many see Sebelius, a former governor and insurance commissioner, as being in a good position to handle the job. At the same time, however, CMS has only an acting administrator, “We needed [an administrator] last spring. This is a huge problem,” Wilensky said. “A person newly coming into that role needs to have some time to acclimate to this relentless position, and make sure deputies and other support structures are in place, and to establish his or her presence.... I don’t understand for something as critical as CMS administrator, what in the world’s going on.”

Health care experts say that the Obama administration has considered six candidates for the post, but all have fallen through for one reason or another.

HHS’s implementation responsibilities are likely to include overseeing an expansion of Medicaid, the federal-state health care program for the poor. “There are a lot of reforms to make Medicaid more uniform,” Wilensky said. “They haven’t really thought about how that may or may not change the role of feds and states.”

In addition, HHS likely would oversee state or regional health insurance exchanges through which uninsured people could purchase insurance, but it’s not yet clear which federal agency would be in charge. “The assistant secretary for planning and evaluation? It’s not an operations monitoring agency,” said Wilensky. “CMS: The Office of Personnel Management? They [OPM] do the Federal Employees Health Benefits Program, but they are very small.”

Establishing the insurance exchanges, and managing the subsidies that flow through them, would be a huge job “because you’re probably going to end up having state-organized exchanges, but with national rules, so you’ve got to make the rules clear. And who’s going to run it and set it up?” said Len Nichols, director of the health policy program at the New America Foundation. “These are large questions with lots of issues to settle, somewhat differently, in 50 states.”
Wilensky said that implementation would likely bring a substantial shift of regulatory power from the states to the federal government.

Moreover, any bill that’s enacted would almost certainly attempt to change the way the health care system pays doctors, hospitals, and other medical providers. The effort would begin with Medicare, which covers 45 million seniors and disabled people.

Of course, if Congress fails to pass health reform this year, Obama and members of Congress will have to decide whether and how to carry the issue into 2010.

Nichols is holding out hope for a bill this year; he believes that failure would turn health care into a heated campaign issue in 2010. “Republicans will complain that Democrats can’t govern, and it will come down to a PR war over who’s responsible for failure and how the American people feel about failure at that point. Then they’ll fight the battle of health reform in the election.”

Democrats’ only hope for continuing the reform bill debate into next year is if they end 2009 as a unified party, health care experts said. Right now, though, liberal Democrats are at odds with the party’s moderate wing and especially those in the House’s Blue Dog Coalition. “If it plays out with Blue Dogs fighting liberals in public, then the Republicans win, and they might win big and take a bunch of seats back and Obama would be crippled,” Nichols said.

But if moderates and liberals are united in the House, Nichols continued, “and it appears that they just need a few more votes in the Senate to deliver reform—that Republican recalcitrance is the main reason reform failed—then that better the chances [of passing a bill] in 2010.”

Wilensky argues that Democrats might even benefit from waiting until the first quarter of 2010 to pass a bill. “I don’t know which is scarier: to sign something and go home, or not to sign something and go home,” she said. Beyond the first quarter, however, she agrees with Nichols that health reform would become a campaign issue.

Wilensky also predicts that Congress will have to revisit Medicare physician payment issues next year because, at this point, it appears that reform bills address the matter only temporarily.

Under current law, Medicare is locked into a formula that has payments to doctors decreasing by more than 10 percent annually. Congress has been legislating small payment increases instead over the past few years. Although both parties want to permanently change the payment system, policy makers seem reluctant to do it through health reform.

The health reform bills approved by House committees included money to permanently fix the payment problem. But because Senate Finance Committee Chairman Max Baucus, D-Mont., wants to provide only enough money to delay the issue a year, House Democrats have asked the Congressional Budget Office to re-estimate the cost of the House bills without the Medicare payment funds in them, Wilensky said. “Baucus said you shouldn’t put this on the back of health reform. There’s some truth to that, except that it’s a big part of what the problem is. What’s driving spending is that it’s such a screwed-up system,” Wilensky said.

In the end, Howard says that coming back in 2010 for a smaller health reform bill is a possibility. “Let’s assume there are some people on the right and left edges in the Democratic Party who voted no because it’s not within their ideology. I find it quite plausible for a bunch of them to come back and say, ‘Gee, maybe we better resurrect this thing.’ They figure out the 60 percent they can agree on and do it. Maybe you start with the low-income part of this, and go as high up the chain as you can with the money you have,” Howard said. “What drives it is the politics. Facing the voters empty-handed, some of the folks who fought the product this year may rethink [their position].”

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