Implications of the New Political Realities on Healthcare Reform

Interview with Dan Mendelson

With the recent change in power in the US House of Representatives that will take effect in January, questions arise regarding potential modifications to some features in the healthcare reform bill and its implementation. With many provisions scheduled to take effect between 2011 and 2014, the political implications of the elections have an immediate practical relevance to health plans, employers, and other healthcare stakeholders. American Health & Drug Benefits discussed some of these issues with Dan Mendelson, who served in the Clinton administration between 1997 and 2000, when there was a similar division of party power between Congress and the administration.

Dalia Buffery: What changes can healthcare decision makers expect to see in the near future as a result of the recent national elections and their potential implications on the reform bill?

Dan Mendelson: First, it is important for everyone involved in healthcare to understand that this is a very fundamental change. The Patient Protection and Affordable Care Act (PPACA, now often referred to as the Affordable Care Act [ACA]), was passed by the Democrats without bipartisan support. Now that there will be a Republican-controlled House, we are in an environment of split government, and in such an environment, compromise and negotiation become necessary for government to run. That is the main implication of the midterm elections, and that is not going to change for at least another 2 years. In fact, we are probably going to be living with some type of power sharing for a long time. This is a fundamental change, and it is the starting point for a heated discussion of healthcare.

Some have dismissed the election, saying, “Well, it is not important, because in order to repeal reform, the Republicans would need a two-thirds majority to override a presidential veto”; in fact, there will be fundamental effects, now and in the future, by virtue of Republican oversight, appropriations, and the fact that many of the new Republican members effectively used the healthcare debate to get elected.

Second, it is important to think about the timing of health system change that was passed under the ACA. There are basically 3 phases of reform. The first involves payment reduction, which has resulted in reductions in profit margins that managed care organizations, hospitals, physician groups, and pharmaceutical companies will endure. That is happening now, and it will intensify through 2012. No one is talking about repealing those cuts.

The second phase of reform is an effort by the federal government to transfer risk from the government to providers. This phase of risk transfer starts in 2012 and continues to 2014. It is proceeding rapidly, and it is clearly going to happen.

The part of the reform that is at risk at this point is the third phase—the coverage expansion. The coverage expansion is not even slated to start until 2014. This is a long lead time, and there is going to be a very rancorous debate during the next couple of years as to how the coverage expansion is going to play out.

Buffery: You seem to suggest that repeal is not in the cards, even though there may be an attempt to repeal the bill?

Mendelson: Full repeal will not happen in the next 2 years. But reform is going to be modified over the coming years, and some legislation may pass that modifies the reform construct. Nobody is talking about repealing the payment reductions. More important, nobody is
talking explicitly about repealing the expansion of health insurance coverage to low-income individuals under Medicaid. Some 16 million additional Americans earning less than 133% of the poverty line will be insured through Medicaid under the ACA, and no one is talking about repealing their coverage—a benefit that will add about $0.5 trillion to federal spending over 10 years.

The part that the new House majority will be focused on is the mandate, and all the associated changes in the commercial marketplace. The best way to think about this is that it is going to be revised serially over the next 4 years, depending on whether the 2 parties actually come together to compromise on this issue and any future changes in the balance of power going forward.

Some other changes will start now. The House majority has 2 tools that it will use to engage with the Obama administration, and having lived through split government, I am familiar with these tools. I was a political appointee in the latter period of the Clinton administration, and at the time I was there, we had split government. The Senate and House had a Republican majority, and we did not do anything of substance without consulting with the committees of jurisdiction.

House Republicans have 2 tools, or powers, in particular that they will use to engage. One is oversight; the House Republican oversight committees will increasingly be bringing the administration up to discuss the regulations, how they are evolving, and the role of different individuals in crafting the regulations. House Republicans will also exercise power through the appropriations process. To fund the government, Congress has to pass a law that says how much is going to be spent, and the House Republicans can affect every aspect of government in that appropriations process.

**Buffery:** What do you think will be the focus in terms of oversight in relation to the healthcare reform?

**Mendelson:** Congress will focus on the coverage mandate for individuals, because this mandate is unpalatable to the majority of Americans, and especially because the purchase of insurance may be burdensome for middle-income Americans. The administration is in an awkward position, because they have spent a lot of time vilifying the insurance industry, and now they are telling Americans that they must purchase that industry’s product. They will also hold oversight hearings on the effects of health reform on business, that is, the reality that for many small- and medium-sized businesses it will be more cost-effective to discontinue insurance and move their employees over to the new healthcare coverage exchanges.

In addition, important insurance regulations are coming up within the next 6 months. The first regulation is the one that defines medical loss ratio; another will define the health insurance exchanges. These will be the focus of much debate, and depending on how aggressive Congress gets, they may try to slow down and stop these regulations through oversight hearings and through the appropriations process.

**Buffery:** What do you envision as the biggest changes to the mandate?

**Mendelson:** When thinking about “real” change in the reform construct, there are 2 possibilities. The first is compromise between the 2 sides, which would involve in-depth discussions about the bill, and possibly replacing the mandate with other policy designed to ensure that most Americans are insured. This will only happen if both sides come to the belief that they will benefit from discussions. Republicans in particular would have to believe that having responsibility for the health economy after the 2012 election is less desirable than stonewalling to try to unseat the president with this issue.

The second possibility is that the Republicans will conclude that they do not want to compromise, and they will continue to use the mandate, the expansion of government, and other issues of interest to their constituents to engage the administration in advance of the 2012 election. In that case, they would engage on the regulations, and then they would conduct hearings and talk about all the problems, and use that as a way to build momentum for the presidential candidacy of a designated person.

Frankly, based on what I have seen so far and in talking with some members of Congress, Republicans are more likely to take the second route of discussing problems, which will mean that it is likely to take an extended period of time before we get more clarity on what will be the final configuration of reform.

**Buffery:** Are there other implications to consider?

**Mendelson:** Two more clinical aspects to the ACA merit some discussion as they relate directly to health plans and those involved in clinical care. The first is the growing interest in the use of evidence-based medicine (EBM) by government and private sector payers. Making decisions based on EBM is a growing trend, and we are going to see comparative effectiveness research and a generation of new evidence become more applicable to what health plans cover. This trend will continue, irrespective of the repeal discussion. My guess is that the Republicans will start to embrace concepts of evidence-
generation more fully now, because it is one of the few tools that most analysts believe can be put in place to control costs in the long run. This will be a Congress that is dominated by fiscal austerity.

It is at times when there is split government that cost-control emerges as an honest priority, as evidenced by the 1995 Budget Act and by the Balanced Budget Act of 1997. It is when the Republicans control the appropriations process and the Democrats control the administration that we can actually get some true fiscal discipline. When we have a concept like EBM—which has the potential for cost-control and strong buy-in from the insurance industry and from the pharmaceutical industry at this point, within certain parameters—there is going to be a movement toward embracing EBM. The Republicans may take issue with some of the structures that were put in place under the ACA—for example, they may try to disband or modify the Independent Payment Advisory Board. But cost-reduction is going to be very popular, and that plays well in the long run for the health plans and for benefit managers, because they know how to do that.

The second clinically oriented observation is that the Center for Medicare Innovation at the Centers for Medicare & Medicaid Services (CMS) will continue to attract bipartisan support. Although CMS generally does not always have that kind of support, the Center for Medicare Innovation is responsible for cost-saving changes in the Medicare payment systems. Rick Gilfillan, who came from Geisinger Health System and is now running this center, will have solid bipartisan support.

Buffery: What about appropriations?

Mendelson: Appropriations will become a negotiation over which programs are going to flourish and which are not. And that, I think, will be shaped by their health policy priorities. Programs like the Center for Medicare Innovation and much of the EBM work should have House Republican support, but House Republicans will attempt to defund other spending, such as the consumer outreach around health insurance exchanges. House Republicans are going to go line by line through the law and figure out what they want to appropriate and what they do not. Of course, any such bill ultimately must be signed by the president, so we can expect some compromise on both sides.

Buffery: Finally, are there any implications to drug development and innovation?

Mendelson: A couple of things relate specifically to the pharmaceutical industry and drug development. The first is that the need to generate evidence, and in particular, evidence of the viability of the product on a postmarketing or a postapproval basis, is increasing. That is going to be firmly cemented over the next couple of years and will have bipartisan support.

The second point is that the PDUFA (Prescription Drug User Fee Act) is up for renegotiation, and having an antiregulatory climate in the House will benefit the pharmaceutical industry significantly in that negotiation. This new climate will also give the pharmaceutical industry some leverage at the US Food and Drug Administration (FDA). It is good timing for the pharmaceutical industry.

For regulatory policy in the FDA, the presence of split government is most likely positive for the development pathways, because it creates more operating stability. It is on the commercial side that there is instability.

Buffery: As a conclusion, keeping our readers in mind, what do you expect that health insurance companies will be doing now?

Mendelson: Good question. They will do a couple of things. First, they will have a new way to engage in the regulations that are being produced by the OCMIO (Office of Consumer Information and Insurance Oversight) and by CMS. They will be able to engage in these regulations in a much fuller way. They will be testifying on them publicly; there will be much more communication about the implications of these regulations, and the insurance industry will engage fully in those discussions.

Second, the insurance industry will be able to talk more freely about the implications of some of these changes. There has been, in essence, an unwritten rule that insurance companies could not talk about premium increases that result from reform, and that now changes. At the same time, the insurance industry faces a very critical choice as to how to position itself around the mandate. The mandate is the thing that makes this entire construct work, and if they want to play with the Republicans at all, health insurance companies have to figure out whether there is a substitute that would enable them to ensure that more people are going to purchase insurance under a construct that is more palatable to the House majority, as well as to the American people.