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BASIC FACTS

COULD A NEW REPUBLICAN PRESIDENT STOP OBAMACARE AND ROLL BACK MEDICAID WITHOUT CONGRESSIONAL LEGISLATION?

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If Republican Mitt Romney wins the 2012 election, he has promised to halt the implementation of the 2010 Affordable Care Act; and along with his running mate Paul Ryan, Romney plans to cut funding for Medicaid by one-third over ten years and leave the states much more on their own to fund the program. Medicaid is currently a federal-state partnership that guarantees basic health insurance to some 65 million Americans – and under Obama's health reform law, Medicaid is supposed to expand to cover another 16 million low-income people.

Some observers pooh-pooh the notion that a newly installed President Romney could gut health reform and contract Medicaid unless Republicans also control both the House of Representatives and the Senate. But this view too easily dismisses the possibilities for unilateral presidential action. Students of U.S. governance stress the rising power of the "administrative" or "unilateral presidency." These concepts refer to the ability of presidents to alter federal programs through executive action alone. In addition to exerting influence through such traditional means as appointments, the budget process, and rulemaking, presidents increasingly issue executive orders, proclamations, directives, and signing statements. For health care, another tool is front and center – program waivers granted by presidential administrations to state governments.

A Brief History of Medicaid Program Waivers

Waivers are not just about interpreting a law duly passed by Congress, but also about declaring "time out" from carrying through its requirements. For Medicaid, provisions of federal law authorize the executive branch to let states experiment with alternative approaches to delivering Medicaid benefits, and also allow officials to approve state requests to shift the delivery of long-term care from nursing homes and other large institutions to home and community arrangements. The executive branch has vast discretion to encourage or discourage, and grant or refuse state waiver requests – but the trend has clearly been toward greater presidential use of waivers:

- From 1965 to 1992, federal officials used Medicaid demonstration authority sparingly, approving about 50 waivers.

- Within a month after taking office in 1993, Democratic President Bill Clinton's administration sent strong signals to welcome Medicaid waiver proposals from state governors – who responded with a flood of requests given expedited review in Washington DC.

- From 2000 through 2008, the administration of Republican President George W. Bush also encouraged waivers and generally renewed those initially approved during the Clinton years. By 2010, 32 states and the District of Columbia operated some facet of their Medicaid programs under waivers. Waivers were often used by the states to expand home and community-based services for the elderly and people under 65 with disabilities. As waivers

soared, the proportion of Medicaid long-term care spending devoted to such care rose from 15 percent in 1992 to nearly 45 percent in 2010.

- Many states have used supposedly temporary waivers to move Medicaid enrollees into managed care while expanding eligibility. Massachusetts is a good example. In the early 2000s, Governor Mitt Romney negotiated with federal officials for a waiver that enabled his state to restructure Medicaid and use generous federal funds to pay for near-universal health insurance. Ironically, either RomneyCare or ObamaCare in Massachusetts depends on continued generous federal funding and periodic renewal of the previously negotiated waiver.

Waivers Could Also Propel Retrenchment in Medicaid

Whatever Republicans claim, an order from a newly installed Romney administration to halt implementation of the Affordable Care Act might not survive court challenge, because the law explicitly says that waivers can be granted only starting in 2017. But the story is different for Medicaid. A new GOP president determined to cut back Medicaid could use waivers and administrative interpretations to give states considerable new freedom to shrink their rolls.

- Although presidents from 1992 through 2008 encouraged state expansions of Medicaid, under previous Republican presidents Ronald Reagan and George H.W. Bush, the federal bureaucracy granted state waiver requests only if they would not cost the federal government more money. A return to the cost-conscious posture present before 1993 could block and reverse state efforts to expand services to the elderly, people with disabilities, and others.

- A presidential administration could also approve waiver requests that sacrifice access and quality to pare costs, as has been proposed by Florida where Medicaid savings would be achieved by shifting the elderly and disabled into privately run managed care operations, with little attention to whether those companies can do a good job.

The Bottom Line – a Determined President Can Wreak Havoc

Discretionary Medicaid waivers are only one tool available to a presidential administration determined to roll back existing and promised health care coverage. A White House committed to undermining Affordable Care could starve the Department of Health and Human Services of the personnel and funds to implement the law, and drag its feet on issuing necessary rules.

For instance, the implementation of the Medicaid expansion promised under Affordable Care depends heavily on the ability of the federal government and the states to work out new arrangements for coordinating Medicaid coverage with subsidies for people to buy private insurance on the new state-run health exchanges. This is one of many delicate and challenging tasks that must be accomplished through cooperation between the national and state governments, if millions of Americans are to receive the new, affordable health insurance coverage promised through Affordable Care in conjunction with traditional Medicaid.

If the new president who takes office in January 2013 is determined to slash Medicaid and prevent effective and timely decisions about the implementation of Affordable Care, considerable damage can be done – even if advocates bring legal cases and the federal courts pressure the administration to move with greater alacrity. Most Americans now tell pollsters they would like implementation of Affordable Care to proceed, with adjustments along the way. Whether this happens depends on who sits in the White House from 2013 to 2016.